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THE LEGAL CONTEXT OF INDIAN EDUCATION IN CANADA

by

© E. R. DANIELS

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH

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FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled "The Legal Context of Indian Education in Canada," submitted by E. R. Daniels in partial fulfilment of the requirements for the degree of Doctor of Philosophy.

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ABSTRACT

With over 72,000 Canadian Indian children registered in programs from Kindergarten through Grade 12, and with more than 60% of these children receiving their education in provincial schools, it is increasingly necessary for the educational administrator to be knowledgeable about the educational status of Indian children and the legal context within which educational services are offered to them. This study examines that context, and attempts to shed some light upon the present status of the Indian community, the Indian parent, and the Indian child.

The constitutional base of Indian education is different from that of most other systems. Indian education is the responsibility of the Federal Parliament, and the Government of Canada is the final repository for its administrative policies. The sharing of this responsibility with other agencies, notably provincial systems of education and local school boards, has become a major aspect of Indian education over the last twenty years.

This study examines (a) the historical development of Indian education; (b) the development of legislation - by provincial legislatures before Confederation, by the Dominion Parliament since 1867 and again, since 1948, by provincial governments - governing the provision of Indian education; (c) the nature and growth of subordinate legislation affecting the administration of Indian education; (d) Canadian attitudes, both Indian and non-Indian, which have either affected, or been affected by, the development of the legal context of Indian education; (e) the past and present status of the Indian community, the Indian parent, and the Indian child in educational matters; and (f) some future trends in the development of both the legal context and the nature of Indian education.

In the area of the legal provisions for Indian education, the study concluded that (1) pre-Confederation legislation was concerned solely with the extension of certain local services to Indian children, with no involvement on the part of the Indian people; (2) between 1868 and 1930, the concept of local Indian participation in the administration of Indian education, together with parallel provisions for its overall control by the Federal government, was expanded; (3) between 1951 and 1963, local Indian control of the educational process was severely curtailed, with emphasis being placed upon 'integrated education' utilizing the facilities of the provincial school systems; (4) since 1963, and particularly during the last three years, Indian involvement in and control of Indian education has reached levels never attained since before the advent of the European to the North American continent.

In the area of the general status of the Canadian Indian in the educational process, the study concludes that (1) the Indian community, through the use of power and influence, has added to its legal status dimensions that can be described as being extra-legal in nature; (2) the Indian parent finds his status increased or diminished depending upon his place of residency, whether on or off the reserve, and the location of his children's school, whether on or off the reserve; and (3) the status of the Indian child centres around those benefits and privileges,

obligations, duties and sanctions which are his, or which may apply to him, under the Indian Act. Although it was not always the case, he has the same protection as non-Indian children, through the application of the principles of Common law, in disciplinary matters.

ACKNOWLEDGEMENTS

There are a number of acknowledgements that must be made to those individuals who greatly assisted in the completion of this study.

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Appreciation must also be expressed to the Education Division of the Department of Indian Affairs in Ottawa for their very open and unstinting cooperation, and in particular to Mr. Dave Wattie, Head of the Research Section. To the many Indian people who generously gave of their time and knowledge in the essential collection of data for this study, and especially to Mr. Rodney Soonias, Director of the Indian Cultural College in Saskatoon, an expression of sincere gratitude is given.

To Dr. L. R. Gue, who was involved earlier in this study, to the Regional Office staff of the Department of Indian Affairs in Edmonton, to the staff of the Law Library, University of Alberta, and to Mrs. Jackie Downer, my last-minute typist, thanks must also be expressed.

It is noted that in virtually all theses a special acknowledgement is given to the wife and family of the writer for their patience, understanding, tolerance, support and encouragement. Now it is understood why.

To Marjorie, Kristi and Kent - thank you.

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CHAPTER I

INTRODUCTION

Wounded Knee. This name now has two connotations for the history of the Indian people of the United States. In 1890, it was the scene of the last of the Indian massacres and, as such, has long been a name to be remembered with distaste and repugnance. In 1973, Wounded Knee has come to mean something very much different in the history of the American Indian people. It has become a name that is synonymous with the demands of modern day Indians for a greater say in the development of their own resources, their lands, and their peoples.

In Canada, we mark no such similar single national tragedy of the same magnitude. But in Western Canada, we do have the scene of a massacre that is associated with the development of our own Indian people. The Frog Lake Massacre of 1885 saw people killed who, although white, were victims of the same sense of violence and brutality of the times. While we have no Frog Lake 1973, we do have an equally significant time and place of confrontation at Blue Quills School, near St. Paul, Alberta, in the summer of 1970.

The confrontation at Blue Quills, while unaccompanied by the violence which was demonstrated at Wounded Knee, was a confrontation based upon the Indian people's desire for self-involvement in their own development.

In this case, the particular development with which they were concerned was education. At Blue Quills, the issue was fairly simply stated as being that of Indian control of Indian education. As such, it marked a new point of development in the administration of educational services for Indian people and, because the confrontation was successful, it also marked the beginning of a new path to be followed in the direction of the administration of those services.

It also brought into focus another aspect of the administration of educational services for Indian people. That focus was the legal basis upon which such services are offered and administered by the body responsible for them, the Department of Indian Affairs of the Federal Government of Canada. "Practice in the field of School Administration must give some consideration to the law as it relates to the administrative agency, its organization, its authority and its duties."[1] Enns' statement is explicit in relating such practices to their legal base. No matter what is said or done in the area of educational administration, unless it is carried out within the framework of the law which gives it its authority, its substantive base will always be open to question and challenge.

It was that legal basis which was challenged at Blue Quills and the challenge resulted in an unexpected example of the way in which the law could be applied.

---

[1] Frederick Enns, "The Legal Status of the Canadian Public School Board" (unpublished Doctor's dissertation, University of Alberta, Edmonton, 1961), p. 1. N.B. Although the unpublished form of the dissertations of Enns, Bargen and McCurdy are referred to as data sources in this study, it should be noted that they were all subsequently published by the Macmillan Company of Canada.

This indicated that the legal context within which education services are provided for Indian people is perhaps inadequately understood and it was with this in mind that the present study was undertaken.

Statement of Problem

In order to clarify the purpose of the present study, the nature of the problems to be considered can be expressed in the following manner:

PROBLEM - To define both the legal and the extra-legal status of the Indian community, the Indian parent and the Indian child in respect of education in Canada today.

SUB-PROBLEMS - To define these positions by examining the existing statutes, the subordinate legislation and the policy statements appropriate to Indian education; to see whether these policies have been tested through court actions; and to indicate those societal attitudes, influences and pressures which, by shaping the development of Indian education over the last 350 years, have led to the present positions.

Delimitations

In order to consider these problems, it is necessary that this study looks at the development of legislation affecting the administration of Indian education. Since the first known schools in Canada were established for Indian students in 1615, it will be necessary to look at some of the statutes enacted in respect of the North American colonies even prior to the clear separation between Canada and the United States. It will also be necessary to look at legislation enacted by the provinces of Upper and Lower Canada in the period before Confederation. And it will be necessary to examine the legislation enacted since Confederation up to the present day. At the same time, appropriate subordinate legislation, such as Orders in Council, Treasury Board Minutes, and the regulations of the Departments responsible for the administration of Indian affairs from 1867, will need to be examined.

The study of the rules and regulations issued by the Departments responsible for the administration of Indian educational services will be restricted by the fact that many of the existing records of rules and regulations have been effectively destroyed.[2] Thus it may not be possible to present a comprehensive, continuous picture of the nature of their development.

As part of this examination, the effect of this legislation and subordinate legislation on the actual provision of educational services to Indian people, by both the Federal and provincial governments, will be noted. This will cover the provision of such services both on and off the Indian Reserve, and will be related to the respective positions of the Indian community, the Indian parent and the Indian child.

While there must be some comparisons made between the effect of legislation upon the Indian community as opposed to the white community, the Indian parent as opposed to the white parent, and the Indian child as opposed to the white child, no detailed study of these provisions will be undertaken.

---

[2] On December 7, 1970, a directive on a new Departmental Educational Assistance policy was distributed. It contained the instruction: "Will you kindly destroy all previous copies of the policy." Similar orders have been given, and carried out, systematically over the years.

It will also be necessary to determine whether any challenges to such legislation have been brought before the courts. Previous studies concerning the legal status of certain aspects of educational administration by Enns[3], Bargen[4], and McCurdy[5] have made extensive use of decisions handed down by the various courts, including the Appeals Divisions of both Provincial and Federal Supreme Courts.

In addition, since the development of legislation respecting Indian education cannot be considered in isolation from the development of the general Canadian society, the expression of thoughts and attitudes of a variety of people about Indian education, and the provision of educational services to Indians, will be recorded and examined.

However, it will not be possible to attempt a complete coverage of all opinions expressed on these topics. Because of the unavailability of some of the earlier as well as the more recently expressed attitudes, such coverage will not be chronogically comprehensive, and will centre on the views expressed by members of the various religious denominations involved in Indian education, by personnel of the Department of Indian Affairs, by members of Parliament, by Indian people themselves, and by various authors, newspaper editors and reporters.

---

[3] Enns, op. cit.

[4] Peter Bargen, "The Legal Status of the Canadian Public School Pupil" (unpublished Doctor's dissertation, University of Alberta, Edmonton, 1959).

[5] Sherburne McCurdy, "The Legal Status of the Canadian Teacher" (unpublished Doctor's dissertation, University of Alberta, Edmonton, 1964).

Limitations

As a result of the delimitations just outlined, the interpretations which may be extracted from this study will also be limited.

It will be possible to obtain a comprehensive overview of the legislative provisions that have applied, and currently do apply, to Indian education in Canada. It will be possible to determine what are the major components of the present status of the Indian community, the Indian parent, and the Indian child in educational matters. And it will be possible to identify some of the attitudes that have been expressed, some of the judgments that have been made, and some of the subordinate legislation that has been developed over the years in respect of Indian education.

However, it will not be possible, as a result of this study, to make direct comparisons between Indian and all non-Indian educational services in Canada. Neither will it be possible to draw comparisons between the administration of Indian education in Canada and its counterpart in the United States, nor to compare educational provisions for Canadian Indians with those for the aboriginal inhabitants in other countries which have experienced white or European domination.

While certain trends and attitudes will be distinguishable in respect of Indian education in Canada, these should not be construed as being (a) totally comprehensive or (b) reflective of the provisions for native education in Canada. Native education would include those services provided to Eskimo (Inuit), Metis, and non-status Indian children, and these matters do not fall within the scope of the present study.

Definitions

Throughout the study, a number of terms will be used which should be defined at the outset. They are as follows:

Indian - A person recognized as an Indian under the terms of the Indian Act (R.S.C. 1949, c. 149);

Indian Reserve - The areas of Crown land, embodied within the terms of the treaties, and set aside from other Crown lands, which constitute the legal domain of the individual Indian Bands, and which are secured for their exclusive occupation, use, exploitation and development;

Indian Band - The recognized community unit of Indian people living on a reserve or on Crown land;

Indian Band Council - The representative body of Indian people, including both Chief and councillors, given the responsibility for managing the affairs of the Indian Band under the terms of the Indian Act;

Indian School Committee - The representative body of Indian people given the responsibility for managing part or all of the affairs pertaining to the education of Indian children from an individual reserve, or community residing on Crown land. The School Committee may be a Committee composed entirely of members of the Band Council; it may be appointed by the Band Council; or it may be a Committee elected at large and independently of the Band Council;

Indian Treaties - Agreements signed between the leaders of various Indian Bands and Tribal groups and representatives of the Crown, under the terms of which title to Indian lands therein designated were surrendered to the Crown in return for actual and promised compensation;

Treaty Rights - Conditions of compensation which are embodied in, or arise out of, the terms of the treaties signed between the leaders of the Indian people and the representatives of the Crown;

Crown Lands - Those areas of the land mass of Canada whose title is held in trust, either federally or provincially, in the name of the Crown and within certain areas of which Indian people may establish, or continue to enjoy, community residence pending settlement of reserve land entitlements under the terms of the treaties;

Common Law - The body of law which is created by "the custom of the people and the decision of the judges";[6] originated in England in the twelfth century out of the necessity to have a body of law which transcended local issues and which would be common to the whole of England; is an integral part of the system of law for English-speaking Canada;

Equity - Originally a body of rules applied by the English Court of Chancery to enable "natural justice" to prevail in cases where the Common Law provided no remedy or only an inadequate remedy; since 1873, it has become a branch of law that establishes remedies only if they are applied for promptly, such remedies being discretionary, and being valid only against "those persons who are in conscience bound to recognize them";[7]

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[6] Glanville L. Williams, Learning the Law (London: Stevens and Sons, Ltd., 1946), p. 17.

[7] W. F. Frank, The General Principles of English Law (London: George G. Harrap and Co. Ltd., 1969), p. 19.

Case Law - Law which evolves from the decision of the courts, and which determines whether and how the law, particularly statute law, may be applied;

Statute Law - That law which is established by legislation; once passed by Parliament and having received the Royal Assent, it is a source of "good law, however ill-conceived or badly drafted it may be";[8]

Subordinate Legislation - The results of the delegation of power by Parliament to the Governor-General in Council, or a Minister of the Crown, or to whomever the Minister may further delegate his authority, which appear in the form of Orders in Council, Ministerial Orders, Departmental regulations, etc.

Since the nature and substance of Indian treaties, treaty rights, and subordinate legislation are of particular importance in the legal context of Indian education in Canada, the definitions given above will be expanded through further examination and discussion in the next two chapters.

Sources and Body of Data

The main body of data will be provided by the record of legislative enactments of the Assemblies of the provinces of Canada and of the Federal Houses of Parliament. In addition, the official records of the Departments responsible for the administration of Indian education services will provide data concerning the development of rules and regulations arising out of these legislative enactments. Records of Parliamentary Committees and of debates in the House of Commons of the Parliament of Canada will provide additional data in respect of the attitudes and opinions held by the elected Members of Parliament during the course of the development of the history of Canada.

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[8] Glanville L. Williams, The Reform of the Law (London: Victor Gollanz Ltd., 1951), p. 38.

Records of the Departments responsible for the administration of Indian education services will yield the data concerning the views of both Headquarters and field staff on the implementation of the legislation and subsequent regulations concerning the administration of such educational services. Newspapers and other archival sources will provide data concerning the expression of opinions and attitudes by those Canadians having a particular interest in Indian education.

Past and present publications in the form of books, pamphlets, memoranda, letters, etc. will provide additional data concerning the development of these legislative provisions and their effect upon both the Indian and non-Indian peoples of Canada.

Validity and Reliability of Analysis of Data

Since this study will not be relying upon statistical data, or the statistical analysis of data, the usual tests of such reliability and validity will have no application to this type of study. Consequently, it must be stated that the validity and reliability will be determined by the constant reappraisal of the data available as the study progresses. Original data collected will be checked against later collections and any inconsistencies or discrepancies will be noted and examined.

In this way, validity and reliability will be established from the writer's viewpoint. But as in all such studies, such validity and reliability may be open to challenge from the viewpoint of the reader, or on the basis of development of future studies which may cover some of these same areas.

CHAPTER II

THE CONSTITUTION, LEGISLATIVE POWERS AND SUBORDINATE LEGISLATION

The structure and operation of Canadian public school systems, according to Enns[1], derive chiefly from the five sources of the constitutional provisions laid down by the British North American Act of 1867, the Statutes enacted by the Legislatures of the various provinces of Canada, the administrative rules and regulations of the provincial departments of education, rules and regulations of local school boards and decisions of the courts in respect of litigation brought before them.

Even though Indian education is a federal responsibility, all stipulations outlined by Enns apply. Thus, since the legal basis for the operation of the system of Indian education derives from these same sources, it will be appropriate to review what is meant by a constitution, what the constitutional provisions are in Canada respecting Indians and the nature of subordinate legislation.

In addition, it will also be essential to consider the legal status of the treaties signed with the various tribes and groupings of Canadian Indians. This is particularly pertinent to western Canada, where treaty rights and educational rights are synonymous in the minds of the Indian people.

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[1] F. Enns, "The Legal Status of the Canadian Public School Board" (unpublished Doctor's dissertation, University of Alberta, Edmonton, 1961), p. 2.

The Nature of Constitutions

"A constitution is the basic design of the structure and powers of the state and the right and duties of its citizens."[2] Lipson goes on to point out, however, that the possession of a constitution as such gives no indication of the basic political climate within which the citizens of a state or nation are allowed to exercise those rights and duties. Certain constitutional rights can remain intact and yet have no practical significance or application, as was demonstrated in Germany during the period 1933-1945. Thus a distinction needs to be drawn between the concepts of 'constitution' and 'constitutionalism'. One implies a sense of enshrined law; the other, the notion of the rule of law.

A constitution is usually a concise, compact document, one of its very many merits being its brevity. On few issues does it elaborate in any detail. At least, this is the North American viewpoint.

The British "constitution" includes both law (i.e. common law and statute law) and conventional usage. As Lipson points out:

> "In Britain there is no document analogous to the United States Constitution. Parliament, unlike Congress is empowered to make any kind of law it chooses. The Courts have no authority to nullify legislation. From the purely legal standpoint, therefore, it is impossible in Britain to specify which rules, procedures, and institutions are part of the constitution and which are not; and a constitutional lawyer, reasoning solely from the legal assumptions, can never satisfactorily explain the nature of the constitution and its sanctions."[3]

---

[2] Leslie Lipson, The Great Issues of Politics (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1960), p. 262.

[3] Ibid., p. 269.

Thus the legal theory, and the political usages which serve to quality it, are both included in the terms "the English constitution." This led to the observation by Lord Chesterfield, in the 18th century, that "England is the only monarchy in the world that properly can be said to have a constitution."[4] On the other hand, de Tocqueville asserted one hundred years later that, because of the legal supremacy of Parliament which may change the constitution at any time by a simple legislative act, there is in reality no constitution at all.[5] Morgan qualified this view in stating that "... in other words, so much of the English constitution as is not to be found in statute law or political usage is to be found - and it is by far the larger part - in the common law."[6]

These viewpoints help to focus our attention upon the central question of what is a constitution. Is it primarily a political instrument or is it primarily a legal charter?

As often appears the case, perhaps it is not possible to state that it is either one thing or the other. Lipson seems to feel this way; he states that "the American constitution has been described as a written one; the British, as unwritten. If these words are taken literally, they are incorrect (since) both constitutional systems include portions that have been committed to writing and portions that have not."[7]

---

[4] Sir Ivor Jennings, The British Constitution (Cambridge: The University Press, 1958), p. 209.

[5] Alexis de Tocqueville, Democracy in America (New York: Vintage Books, 1955), Vol. 1, p. 106.

[6] J. H. Morgan, "Constitution and Constitutional Law", Encyclopaedia Britannica (1957), VI, p. 317.

Apart from this question as to what constitutes a constitution, the additional point is usually raised that an unwritten constitution has a greater degree of flexibility than that which can be described as a legal charter. Accepting that the British constitution consists of two parts, law and custom, it has been pointed out that the law may be changed at any time by an ordinary Act of Parliament. But custom, too, since it is based in Common law, may be altered by statute, or even by the simple device of breaking away from precedent. The amending process of a formal, written constitution, however, is no easy matter. As Lipson reiterates, "the amending process enshrined in the (United States) constitution itself, presents a formidable obstacle to innovation."[8] This observation brings our focus once again upon North American constitutions as legal charters. It also emphasizes the basis in law for such constitutions, and for any acts affecting the provision of services to the citizens protected or served by those constitutions.

---

[7] Lipson, op. cit., p. 270-1.

[8] Ibid., p. 271.

As United States Chief Justice Marshall pointed out in 1803, in the case of Marbory v. Madison,

> "The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative Acts, and, like Acts, it is alterable when the legislature shall please to alter it... Certainly, all those who have framed written constitutions, contemplate them as forming the fundamental and paramount law of the nation."[9]

Because of this concept of the constitution as supreme law, it has become customary in many quarters to think of a constitution as a lawyer's document to be construed in legal fashion. Constitutionalism is bound up with the notion of the rule of law. It embraces the idea that a government should not be permitted to do whatever its officials please, but should conduct itself according to equitable and agreed procedures. This perhaps stems from the fact that "colonial experience demonstrated that liberty under government required, for its protection, a written constitution."[10]

The Canadian Constitution

It is hardly surprising, under those circumstances, that the Canadian constitution should take the form of a written document rather than following the British example of an unwritten constitution. As is pointed out by McInnis, "the combining of the British parliamentary system with the American federal principles was a symbolic Canadian achievement - all the more so when both elements were freely adapted to Canada's own particular needs."[11]

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[9] Ibid., p. 258.

[10] Avery Craven and Walter Johnson, The United States: Experiment in Democracy (Toronto: Ginn and Co. Ltd., 1952), p. 115.

Sir John A. Macdonald, the prime architect of the British North America Act of 1867 which is the Canadian constitution, himself referred to this eclectic approach to the writing of the Canadian constitution.

> "It is the fashion now to enlarge on the defects of the Constitution of the United States, but I am not one of those who look upon it as a failure. I think and believe that it is one of the most skillful works which human intelligence ever created... We are happily situated in having had the opportunity of watching its operation, seeing its working from its infancy till now... We can take advantage of the experience of the last seventy-eight years, during which that Constitution has existed, and I am strongly of the belief that we have, in great measure, avoided in this system which we propose for the adoption of the people of Canada the defects which time and events have shown to exist in the American Constitution."[12]

However, as well as looking at the model of the legal charter of the United States, Canada's desire was for "a Constitution similar in principle to that of the United Kingdom."[13] McInnis states that, "that single phrase covered the unwritten yet vital part of Canada's Constitution - the vast and somewhat indefinite agglomeration of prerogatives and conventions of customs and statutes and judicial decisions, which underly the British system of government... The rights of British subjects rest on the Common law and on the great concessions wrested from the Crown through a long series of constitutional struggles, and Canada is heir to the full body of these privileges and safeguards."[14]

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[11] Edgar McInnis, Canada: A Political and Social History (Toronto: Rinehart and Co. Inc., 1959), p. 299.

[12] Ibid., p. 300.

[13] Canada, The British North America Act, 1867 (30 and 31 Victoria, c. 3) (Ottawa: King's Printer, 1935), p. 1.

The Canadian Constitution and Legislative Responsibilities

One of the basic features of the British North America Act of 1867 was the distinction it drew between those areas which were the legal prerogative of the centralized federal government and those which fell under the jurisdiction of the various provincial governments. Laskin has stated that "the vital core of a federal constitution is the division of legislative powers between the central authority and the component states or provinces."[15] In the case of Canada, McInnis makes the point that "it had been the clear intention of the fathers of confederation to confer on the federal government full control over all matters affecting the general interests of the Dominion as a whole... the distribution of powers under the British North America Act was designed to confine the provinces to purely local matters." He quotes the words of Sir John A. Macdonald himself who, summing it up in the simpliest terms, stated that "in the proposed constitution, all matters of general interest are to be dealt with by the general legislature, while the local legislatures will deal with matters of local interest which do not affect the confederation as a whole."

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[14] McInnis, op. cit., p. 302.

[15] Bora Laskin, Canadian Constitutional Law (Toronto: The Carswell Co. Ltd., 1969) p. 3.

One of the matters which did affect "confederation as a whole" in 1867, was that the land question in western Canada had still to be resolved. Since this involved the process of treaty-making with the western Indians, the distribution of legislative powers written in to the British North America Act assigned to the Federal government, under Section 91, Subsection 24 of that Act, the responsibility for legislating on behalf of "Indians and Lands reserved for the Indians."

The Federal Parliament, then, has the prime responsibility for framing legislation affecting the Indian people of Canada.[16] However, in speaking of the execution of this task, the problem of observing specific principles in the writing, and the subsequent interpretation, of such legislation must be borne in mind.

It has already been noted that Acts of Parliament, however ill-conceived or badly drafted they may be, having been duly passed and having received Royal Assent, become sources of 'good law.' In addition, it must be remembered that "... as long as an Act of Parliament has not been repealed it remains good law."[17]

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[16] The Federal Parliament does not have the sole responsibility of framing legislation which may affect Indian people. Provincial Legislative Assemblies, in passing laws which apply to matters affecting the residents of their respective provinces in general, may also be regulating for the Indian people.

Bearing in mind the ordinary human inadequacies of the makers of legislation, the Interpretation Act, passed by the British Parliament in 1889, incorporated judicial practice and legislation into the laying down of certain general principles of interpretations.

Under these principles, the following specifics are observed:

> "1. The meaning of the statute must always be derived from its wording.
>
> 2. The words of a statute should always be interpreted according to their literal meaning... unless this would lead to a manifest absurdity or unless this meaning appears to clash with the intention of the legislature as gathered from the statute itself.
>
> 3. Words should always be interpreted in the context in which they appear, and not in isolation.
>
> 4. Where the words are ambiguous, the statute should be considered as a whole to discover the purpose which the legislators had in mind when they passed it.
>
> 5. Where an Act of Parliament may be interpreted in two ways, one of which involves a change in the existing law while the other is compatible with common law as it stands, the court will adopt the latter interpretation."[18]

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[17] Frank, op. cit., p. 26.

[18] Ibid., p. 26.

Williams[19] tells us that a hundred years ago, Parliament generally provided for every detail in these Acts, and that even if a form had to be altered in wording, an Amending Act of Parliament was often necessary. As a result, many of the Acts were unnecessarily long and dealt with aspects of the law that were not, as a rule, matters of principle, but rather points of detail with which it hardly seemed worthwhile to trouble Parliament. Most of the Amending Acts of Parliament dealt with technicalities that were subject of frequent adjustment, and it soon became apparent that were Parliament to discuss such matters in detail, it would have no time for anything else.

Consequently, while "the most important kind of legislation is the Act of Parliament... nowadays what is called delegated legislation has come to be of great importance as well."[20]

Delegated or Subordinate Legislation

There is no doubt that Parliament has the prime responsibility for the framing of legislation affecting much of the conduct of everyday life in this country. Under the terms of the British North America Act, it is precluded from having a monopoly in this area of government, since the Legislatures of the various provinces have also certain areas in which affective legislation is their exclusive concern. But both Parliament and the Provincial Legislatures may delegate some of their powers to other persons or bodies.

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[19] Glanville Williams, The Reform of the Law (London: Victor Gollanz Ltd., 1951) pp. 38-9.

[20] Williams, op. cit., p. 16.

The main instances of delegated legislation are the transfers of legislated powers to individual Ministers of the Crown, or to the Governor-General in Council (in the case of Canada as a whole), and the Lieutenants-Governor in Council in the respective provinces.

Ministers exercise their powers by making regulations or by issuing Ministerial Orders; the Governor-General and the Lieutenants-Governor utilize the process of making Orders-in-Council.

There are several reasons for the delegation of Legislative powers by both the Parliament and the Legislatures. In the main, it can be stated that these bodies are generally short of time and cannot therefore discuss all Bills in sufficient detail. At the same time, they may not wish to deal with details of legislation in which the subject matter is so technical that few members of the respective Houses might feel competent to discuss it. In addition, there is the realization that some provisions in these Acts may need to be changed quickly as circumstances arise or alter, and it may be more convenient if this can be done by Ministerial Order rather than by Act of Parliament.

However, there is one vital difference between parliamentary legislation and delegated legislation that must be noted.

> "Courts of law may not question the validity of an Act of Parliament on the grounds that Parliament has exceeded its powers. This is impossible, since there are no legal limits to the powers of Parliament.[21]

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[21] Elmer A. Driedger, in "Subordinate Legislation," The Canadian Bar Review, March, 1960, p. 4, points out that this is only true in respect of the United Kingdom. He maintains that in ". . . a federal state such as Canada . . . where legislative jurisdiction is divided between different legislative bodies, the validity of a statute can be challenged on the ground that the enacting legislature exceeded its constitutional authority."

> The position with delegated legislation is different. The Minister or the local authority making a legal rule are acting merely on the basis of authority given them by Parliament. If they exceed the authority given them, whether by making an order for a purpose for which they had no power to make orders, or by not complying with the conditions laid down by Parliament as to the procedure to be followed in making the order, the order will be void, 'ultra vires' (outside the powers of) the Minister or local authority concerned. The Courts of Law may therefore examine every order which they are asked to apply with a view to determining whether it falls within the scope of the delegation of legislative power by Parliament. It stands to reason that, since delegated legislation is derived from Parliamentary legislation, it is impossible to amend or appeal an Act of Parliament by the exercise of delegated legislation unless the Act of Parliament itself permits it."[22]

Under the press of modern expediency, it is not surprising that such subordinate legislation is considered just as much a part of the law of the land as is the Common law or Parliamentary legislation. However, faced with the enormous and growing quantities of statutory instruments, it becomes increasingly difficult to know what exactly the law is in many areas. In fact, it has been pointed out that not only is the task more difficult, but frequently it may be impossible, since, because of the large number of instruments involved, some may be out of print, some may be redundant awaiting new printed amendments, and some, particularly Orders in Council, may not be readily available for public scrutiny. Thus, the law may be inaccessible to those who wish to examine it.

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[22] Frank, op. cit., p. 27.

Subordinate Legislation and the Civil Service

Since subordinate legislation plays a major part in the administration of educational services for Indians in Canada, no reference to this topic would be complete without an additional reference to the Civil Service, the body responsible for the administration of and, in many cases, the framing of such legislation.

It has been suggested that "the growing importance of delegated legislation is a symbol of the growing powers of the Civil Service, since civil servants draft these instruments and the Minister only signs them."[23] While this may be open to question, it has also been noted that "powers of a most arbitrary kind (may be conferred) upon government departments - even to the paradoxical extent of enabling them to make regulations inconsistent with the Act under which they are made."[24]

There would seem to be some evidence of this in respect of the administration of Indian educational services.[25]

Morgan goes on to point out that judicial powers are sometimes conferred on government departments in the interpretation of statutes without appeal to the courts. But he is concerned about this type of development:

> "Such developments are objectionable, not because they offend against any abstract theory of separation

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[23] Ibid., p. 28.

[24] Morgan, op. cit., p. 320.

[25] See pp. 139 and 141

> of powers, still less because they are unprecedented... the real objection is that no government department should be judge in its own cause, or act as a legislature without the check of popular control."[26]

Williams does not share this concern. He feels that "... nobody is better at scrutinizing the conduct of a civil servant than a civil servant who is employed in another department. The scrutiny of administrative orders, both in form and in policy, is one of the functions of the (Department) of Justice."[27]

But again, there is some evidence that the attitudes and opinions of civil servants in relationship to the administration of education services for Indian people led to some very arbitrary decisions in areas where legislation was minimal and these decisions were reinforced by other civil servants. These will be examined in detail in Chapter VII.

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[26] Morgan, op. cit., p. 320.

[27] Williams, op. cit., p. 40.

CHAPTER III

INDIAN TREATIES AND TREATY RIGHTS

An essential element in any study of matters pertaining to Canadian Indians is the consideration of the treaties and the treaty rights which emanate from them. In viewing the treaties, however, it is important to recognize that these are documents which relate to specific agreements between the Indian peoples of Canada and the Crown.

It has already been noted that the Federal Parliament, at the time of the passing of the British North America Act, was assigned the responsibility for "Indians, and Lands reserved for the Indians" largely on the basis of the unsettled Western lands question. But the present Minister of Indian Affairs has suggested that perhaps there were other reasons as well.

In March, 1971, he stated:

> "The original decision to centralize had been based on the need for a consistent approach to the land settlement question and on military necessities. Consistency was still required although the military problems had diminished.
> There was also the fact that the bulk of the Indian people lived in areas which were to become Federal territories and those who were within the bounds of the provinces were largely settled on reserves, which were Crown held.
> The Indian people were accustomed to looking to the Superintendent-General of Indian Affairs and his staff and beyond him to the Crown itself. They would have been disturbed at the prospect of losing this direct relationship - as indeed they are today when such a change is proposed.
> The fourth reason was a lack of confidence in how the provinces would treat the Indian people fairly. There

> was a fear that the provinces, responding to local pressures, would connive to take away the Indian's land and leave him a homeless vagrant."[1]

In any case, the new Dominion, with the entry of British Columbia into confederation in 1871, would stretch from "sea to shining sea", and would include the vast area between the western boundaries of Ontario and the Rocky Mountains of British Columbia known generally as Rupert's Land or by its later designation as the North West Territories. This huge area, largely unknown and unchartered, was, at the time, the exclusive property of the Hudson's Bay Company under their Royal Charter of 1670. It was necessary, first of all, to acquire this vast area from the Company and bring it under the direct control of the new Government of Canada and, secondly, to transfer the effective title of that land from the Indian people to Her Majesty.

The Recognition of Indian Land Rights

Basically, Indian treaties are agreements that extinguish the title to land over which they had previously roamed and hunted freely before the arrival of the white man. The title to those lands would now pass to the Crown. It is of importance to note, however, particularly in the case of Canada as opposed to the United States, that the two "founding nations" had different viewpoints as to the question of whether the Indian people actually enjoyed title to the lands in which they were located.

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[1] The Hon. Jean Chretien, "The Unfinished Tapestry-Indian Policy in Canada"; text of a speech delivered by the Minister of Indian Affairs and Northern Development at Queen's University, Kingston, Ontario, March 17, 1971, pp. 3-4.

Surtees points out that "since the French had never recognized Indian title to land, no agreement was required with the Indians who lived within their territory."[2] Harper puts it more explicitly:

> "From the beginning the French begged the question of Indian title. They had, in fact, no settled, well-defined policy. It was assumed that when a tribe or band of Indians assented to French rule, the title to their land passed to the French sovereign, including their rights of occupancy. Treaties were not made to cede the title of the land or to secure legal recognition for the occupancy of reserves, but rather to formalize the Indians' consent to the authority of the King of France and to acknowledge that sovereign as the rightful ruler over themselves and the territory which they occupied."[3]

The difference between the attitude of the French Crown and British Crown in this regard is neatly summarized by MacInnes when he states that "under the French regime, the Indians were treated kindly even benevolently, but the French government never recognized them as having special legal rights. The British, on the other hand, from their first contact with the Indians of North America recognized an Indian title or interest in the soil to be parted with or extinguished, only by lateral agreement."[4] Certainly, as Cumming and Mickenberg tell us,

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[2] Robert J. Surtees, The Original People (Toronto: Holt, Rinehart and Winston, Ltd., 1971), p. 60.

[3] A. G. Harper, "Canada's Indian Administration: The Treaty System," America Indigena, Vol. 7, 1947, p. 131.

[4] T. R. L. MacInnes, "The History of Indian Administration in Canada" Canadian Journal of Economics and Political Science, 12, 3, August 1948, p. 387.

British Indian policy throughout the North American possessions was, from an early date, concerned with aboriginal rights.[5]

It is recorded that in 1629, letters of instruction were sent to Governor Endicott of the Massachusetts Bay colony, enjoining him to secure title to lands previously occupied by Indians through purchase. In 1683, explicit instructions to the Governor of New York, Colonel Thomas Dongan, required him to "take all opportunities to gain and procure from the Indians upon reasonable rates and terms such tracts and quantities of ground as are contiguous to any other lands or convenient for any territories in trade, either seaports or others, thereby to enlarge and secure any territories."[6] Other efforts were made by Governors of the Colonies along the Atlantic seaboard to secure Indian lands solely by means of purchase, but these were not always successful in either gaining title to the land or in achieving peace and friendship with the Indians.

The Need for an Overall Policy

By the 1750's, it was evident that the individual efforts in this regard were badly in need of overall co-ordination. It was becoming evident that the various private and indiscriminate agreements, arrived at either through financial or military pressure, to secure rights to lands formerly occupied by Indians, were both undermining the general concept that all lands in these new overseas territories were considered to be, unless specifically disposed of by the King, Crown lands. At the same time, the pressure of expanding settlement was aggravating the whole problem of maintaining friendship with the Indians, particularly in view of the ongoing conflict between the English and French settlers in the New World.

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[5] Peter A. Cumming and Neil H. Mickenberg, Native Rights in Canada (Toronto: The Indian-Eskimo Association of Canada, 1972).

[6] Ibid., p. 67.

Thus, at the Albany Congress of June 1754, an effort was made to establish a joint policy for the regulation of purchases of Indian lands. No such overall agreement was forthcoming, however, and, as a result, the new Office of the Indian Department was established in 1755 to regulate all business, both political and military, that was to be conducted with the Indians.

Instructions from the British Government to the first Head of that department, Sir William Johnson, specified "that the Indians be remedied and satisfied with regard to their complaints about their Lands, particularly those Grants and Patents mentioned in the former parts of these Papers, and that no Patents for Lands be hereafter Granted but such as shall be bought in the presence of the Superintendent at public meetings and the sale recorded by His Majesty's Secretary for Indian Affairs."[7]

The Proclamations of 1761 and 1763

These intentions were dealt with in considerably more detail in the Proclamation of 1761 which was issued to the Governors of Nova Scotia,

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[7] Ibid., p. 24.

New Hampshire, New York, Virginia, North Carolina, South Carolina and Georgia. This Proclamation reiterated the position of the Crown in respect of these matters and laid down the direction in which future purchases of Indian lands should proceed. The full text of the Proclamation of 1761 contains the background of the political considerations which lead to its issuance but the relevant sections dealing with Indian land transactions are as follows:

> "And whereas not withstanding the repeated Instructions which have been from time to time given by our Royal Grandfather to the Governors of Our several Colonies upon this head the said Indians have made and do still continue to make great complaints that Settlements have been made and possession taken of lands, the property of which they have by Treaties reserved to themselves by persons claiming the said lands under pretense of deeds of Sale and Conveyance illegally, fraudulently and surreptitiously obtained of the said Indians... and being determined upon on all occasions to support and protect the said Indians in their just Rights and Possessions and to keep inviolable the Treaties and Compact which have been entered into with them, Do hereby strictly enjoyn (sic) and command that neither yourself nor any Lieutenant Governor... do upon any pretense whatever upon paying of Our highest Displeasure and of being forthwith removed from your or his office, pass any Grant or Grants to any persons whatever of any lands within or adjacent to the Territories possessed or occupied by the said Indians or the Property Possession of which has at any time been reserved to or claimed by them."[8]

This document, referring specifically to those territories and property possessions of the Indians which "have been reserved to or claimed by them," serves as one of the prime statements by the British

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[8] Ibid., p. 285

Crown that the Indians "may be apprized of our determin'd Resolution to support them in their Just Rights" is one of the keystones of British policy in respect of their dealings with the Indians of North America.

The application of this policy was shortly followed by and re-emphasized in the Royal Proclamation of 1763, issued on the 7th of October, following the signing of the Treaty of Paris on February 10th of that year. This Proclamation followed the ending of the French military threat in North America and laid the groundwork upon which negotiations with the general Indian population of both Canada and British North America would now proceed.

This document has been referred to "The Charter of Indian Rights" and the "Magna Carta of the Canadian Indian." Its vital sections read:

> "And Whereas it is just and reasonable, and essential to our Interests, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds... And we do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also are the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid... and whereas great Frauds and Abuses have been committed in purchasing Lands of Indians to the great Prejudice of our Interests and to the great Dissatisfaction of the said Indians; In order therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with

> the Advice of our Privy Council, strictly enjoin and require, that no Private person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians within these parts of our Colonies where We have thought proper to allow Settlement; but that if at any Time any of the said same shall be Purchased only for Us in our Name, at some public Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose."[9]

The Nature of Indian Treaties

What is a treaty? According to Black's Law Dictionary, the term concerns compacts or agreements "between two or more independent nations." In the case of Rex v. Syliboy (1905), Judge Patterson stated that "Treaties are unconstrained Acts of independent powers."[10] And, according to Green, a treaty, as recently defined by the United Nations in the Vienna Convention on the Law of Treaties, is "an international agreement concluded between States in written form and governed by international law."[11]

But, as Green goes on to point out, that definition is one for today and since the Indians cannot be considered to constitute a State within those terms, it is clear that any document signed with them would have to be excluded from this definition. This opinion had previously been stated by MacInnes in his statement that "these Indian treaties are not treaties in the sense in which that term is used with respect to agreements between high-contracting and sovereign powers. They are rather a unique device, which probably has no exact counterpart in the annals of political science."[12]

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[9] Canada, R. S., (1970) Appendices, pp. 127-8.

[10] N. A. M. MacKenzie, "Indians and Treaties in Law" Canadian Bar Review, 7, 1929, p. 562.

[11] L. C. Green, Canada's Indians-Federal Policy, International and Constitutional Law (Edmonton, Alberta: Queen's Printer, 1970).

In addition, Judge Davey, in Regina v. White and Bob (1965), stated clearly that an Indian treaty is not an "executive act establishing relationships between what are recognized as two or more independent states acting in sovereign capacities.[13]

Thus, it would seem clear that the agreements into which the Indians entered with the representatives of the Queen can be considered neither as international treaties nor even, under the definition of a treaty in private law, as simple contracts. Rather, they are documents which embody both of these concepts.

The Necessity to Make the Treaties Questioned

The English view of both the necessity to enter into treaty negotiations with Indians and the legality of such treaties, was brought into question by a Swiss jurist even before the advent of confederation, however.

Emmerick De Vattel, writing in his Law of Nations, as quoted in the Journals of the Legislative Assembly of Canada, 1844-5, questioned the necessity for such land-transfer treaties:

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[12] MacInnes, op. cit., p. 387.

[13] Cumming and Mickenberg, op. cit., p. 54.

> "There is another celebrated question to which the discovery of the new world had principally given rise. It is asked whether a nation may lawfully take possession of some part of a vast country in which there are none but erratic nations, whose scanty population is incapable of occupying the whole? We have already observed in establishing the obligation to cultivate the earth, that these nations cannot exclusively appropriate to themselves more land than they have occasion for, or more than they are able to settle and cultivate. Their unsettled habitation in these immense regions, cannot be counted a true and legal possession, and the people of Europe, too closely pent up at home, finding land of which the savage had no particular need, and of which they made no actual constant use, were lawfully entitled to take possession of it and to settle it with colonies."[14]

This idea that title to land was dependent upon "the obligation to cultivate the earth" had been expressed by Sir Francis Bond Head, Lieutenant-Governor of Upper Canada between 1835 and 1838, when, in addressing an assembly of Indians at Manitoulan Island on August 9, 1836, he stated:

> "In all Parts of the World, Farmers seek for uncultivated Land as eagerly as your Red Children hunt in your forest for game. If you would cultivate your Land it would then be considered your own Property in the same Way as your Dogs are considered among yourselves to belong to those who have reared them; but uncultivated Land is like wild Animals, and your Great Father, who has hitherto protected you, has now great Difficulty in securing it for you from the Whites, who are hunting to cultivate it."[15]

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[14] Surtees, op. cit., p. 33.

[15] Ibid., p. 37.

Similarly in British Columbia, Indian title to the land, or the consequent necessity to extinguish that title, was questioned by Sir Joseph Trutch, Chief Commissioner of Lands and Works under Governor Seymour in 1867. He expressed his opinion about the recognition of title that the former Governor of the Crown Colony, Sir James Douglas, had been willing to extend, and about the way in which the extent of those Indian lands had been determined by Douglas' surveyor, a man named McColl:

> "... (McColl) seems to have merely walked over the ground claimed by the Indians, setting up stakes at the corners pointed out by them... the Indians regarded these extensive tracts of land as their individual property; but of far the greater portion they make no use whatsoever, and are not likely to do so; and thus the land... is of no real value to the Indians and utterly unprofitable to the public interests... the Indians have really no right to the lands they claim, nor are they of any actual value or utility to them, and I cannot see why they should either retain these lands to the prejudice of the general interests of the Colony, or be allowed to make a market of them either to Government or Individuals."[16]

In the same vein, these governmental and legal viewpoints were echoed by the white settler himself. A German visitor of the time, J. G. Johl, in his Travels in Canada and Through the States of New York and Pennsylvania, is quoted as having been told by a Simcoe area farmer:

> "Our Government makes a great deal too much ceremony with these fellows and their rights of property, as they call them. What property can an Indian have but his bow and arrow, and his fighting cackle? This notion of Indian property in land is quite a new-fangled invention."[17]

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[16] F. E. Laviollette, The Struggle for Survival (Toronto:University of Toronto Press, 1961), p. 109.

[17] Surtees, op. cit., p. 38.

These viewpoints notwithstanding, the process of securing legal title for the Crown in Indian lands through the signing of treaties was well advanced by the time of the passing of the British North America Act of 1867.

Indian Education and the Eastern Treaties

Whilst much that is of interest and fascinating with detail concerning the group of "Eastern" treaties, concluded prior to Confederation, could be written - from Captain Zachariah Gilliam's 1668 "Treaty" with the Indians of Rupert's River for the purpose of securing title to the river and surrounding lands, to the 1693 Treaty signed at Fort William Henry under which the Indians involved agreed to "abandon and forsale the French interest"; and from the Haldimand Treaty of 1784 which saw Mississauga lands being surrendered in order to accommodate Joseph Brant's relocating Mohawks, following their expulsion, along with other United Empire Loyalists, from the States after the American Revolution, to the Robinson-Huron and Robinson-Superior Treaties of 1850 whose primary aims were the securing of mineral rights in those potentially vastly rich areas of Ontario - let it suffice to say that the following statement made by the Indian Affairs Branch in 1964 was incorrect:

> "... the Crown undertook to set aside reserves and provide additional benefits such as cash payments, annuities, educational facilities and other considerations."[18] (underlining added)

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[18] "The Administration of Indian Affairs"; position papers prepared for the 1964 Federal-Provincial Conference on Indian Affairs by the Indian Affairs Branch, Department of Citizenship and Immigration, Ottawa, 1964, p. 4.

While certain steps were taken to divert some of the monies provided under the treaties towards the financing of basic education services at a later date (e.g. to supplement the Indian School Fund), no specific clauses or commitments were contained in any of the Eastern or "Unnumbered" treaties which related to education. This stands in direct contrast to the education clauses included in the Western or "numbered" treaties which were negotiated after Confederation.

Indian Education and the Western Treaties

With the signing of Treaty No. 1, the first of the Western or "Numbered" treaties, on August 3, 1871, at Lower Fort Garry, between Commissioner Wemyss Simpson and the Chiefs of the Chippewa and Swampy Cree Indians of what is now Manitoba, the first mention of education services for Indian children is made. The clause:

> "And further, Her Majesty agrees to maintain a school on each reserve hereby made whenever the Indians of the reserve should desire it."[19]

sets the beginning of a series of treaty rights inclusions which, although the specific provisions vary from time to time, commit the Federal Government, and also the Indian people, to the provision of educational services on reserves.

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[19] Canada, Treaties Nos. 1 and 2 between Her Majesty the Queen and the Chippewa and Cree Indians (Ottawa: Queen's Printer, 1957), p. 4.

Treaty No. 2, signed by Commissioner Simpson and the Chiefs of the other Chippewa Bands at Manitoba Post on August 21, 1871, contained the identical clause.

But the wording of the appropriate clause in Treaty No. 3 concluded by Alexander Morris, Lieutenant-Governor of Manitoba and the Northwest Territories, and the Saulteaux Tribe of the Ojibbeway Indians on October 3, 1873, at the North-West Angle of the Lake of the Woods, had already varied. The reworded clause now stated:

> "And further, Her Majesty agrees to maintain schools for instruction in such reserves hereby made as to Her Government of Her Dominion of Canada may seem advisable whenever the Indians of the reserve shall desire it."[20]

By the time Treaty No. 4 was concluded between Morris and the Cree, Saulteaux and other Indian tribes at Qu'Appelle (September 15, 1874) and Fort Ellice (September 21, 1874), the wording of the clause had varied slightly again:

> "Further, Her Majesty agrees to maintain a school in the reserve allotted to each Band as soon as they settle on said reserve and are prepared for a teacher."[21]

When Treaty No. 5 was initially concluded at Beren's River on September 20, 1875, and Norway House on September 24, 1875 (the adhesions to this treaty were not all concluded and signed until July 29, 1909),

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[20] Canada, Treaty No. 3 between Her Majesty and the Saulteaux Tribe of the Ojibbeway Indians (Ottawa: Queen's Printer, 1966), p. 5.

[21] Canada, Treaty No. 4 between Her Majesty and the Cree and Saulteaux Tribes of Indians (Ottawa: Queen's Printer, 1966), p. 7.

Alexander Morris had returned to the wording which appeared in the appropriate clause in Treaty No. 3. However, as part of the provisions spelling out the land holdings of the reserves to be established under this treaty, it is interesting to observe that the stipulation was made that certain lands should be set aside in order that "... Her Majesty, or Her Successors, may in Her good pleasure, see fit to grant to the Mission established at or near Beren's River by the Methodist Church of Canada, (land) for a church, school-house, parsonage, burial ground and farm, or other mission purposes."[22] This is the first treaty acknowledgment of both the involvement of the Church in the education of Indian children (the circumstances under which this treaty was signed will be referred to later) and of a commitment of Indian lands specifically to a Church organization for the purpose of providing these services.

Treaty No. 6, signed in 1876 between Morris and the Plain and Wood Cree Indian Chiefs at Fort Carlton (August 28) and Fort Pitt (September 9) - its adhesions were not concluded until as late as November 21, 1950 at Rocky Mountain House, Alberta, and May 15, 1956 at Cochin, Saskatchewan - contained a reiteration of the wording of the clause which previously appeared in Treaties No. 3 and No. 5.

Treaty No. 7, however, the "Blackfoot Crossing Treaty," saw a significant change in the wording of the educational clause agreed to between David Laird, Lieutenant-Governor and Indian Superintendent of the Northwest Territories, and the Chiefs of the Blackfeet, Blood, Peigan, Sarcee, Stony, and other Indian tribes gathered at the Crossing on September 22, 1877. At that ceremony, it was stated that:

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[22] Canada, Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians (Ottawa: Queen's Printer, 1969), p. 5.

> "Further, Her Majesty agrees to pay the salary of such teachers to instruct the children of said Indians as to Her Government of Canada may seem advisable, when said Indians are settled on their Reserves and shall desire teachers."[23]

This wording, with the deletion of the concluding phrase - "when said Indians are settled on their Reserves and shall desire teachers" - was used again by Laird at Lesser Slave Lake on June 21, 1899 when he concluded Treaty No. 8 with the Cree, Beaver, Chipewyan and other Indian tribes of what would later be parts of Northern Alberta, Saskatchewan, and part of the Northwest Territories.

The most encompassing wording of all, however, was used by Commissioners Scott, Stewart, and MacMartin in 1905 when, in concluding the James Bay Treaty with the Ojibway, Cree and other Indian chiefs, it was agreed:

> "Further, His Majesty agrees to pay such salaries of teachers to instruct the children of said Indians, and also to provide such school buildings and educational equipment as may seem advisable to His Majesty's Government of Canada."[24]

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[23] Canada, Treaty No. 7 between Her Majesty the Queen and the Blackfeet and other Indian Tribes (Ottawa: Queen's Printer, 1966), p. 5.

[24] Canada, The James Bay Treaty-Treaty No. 9 (Ottawa: Queen's Printer, 1964), p. 21.

By the following year, when Commissioner James McKenna concluded Treaty No. 10 with the chiefs of the Chipewyan, Cree and other Indian inhabitants of the region at Isle à la Crosse on August 28, such specificity had gone and was replaced by an all-encompassing clause, one which already seemed to presage the necessity for making a general rather than a precise commitment to the Indian people. The relevant clause now stated:

> "Further His Majesty agrees to make such provisions as may from time to time be deemed advisable for the education of Indian children."[25]

In the light of the wording of that treaty commitment, it is interesting to speculate upon why, after a lapse of fifteen years, the next (and, to this date, final) treaty between His Majesty's representatives and the Indian peoples should revert back to the seemingly meagre provision that:

> "Further, His Majesty agrees to pay the salaries of teachers to instruct the children of said Indians in such manner as His Majesty's government may deem advisable."[26]

This treaty, Treaty No. 11, was concluded by Commissioner Henry Conroy and the Slave, Dogrib, Loucheux, Hare and other Indian representatives of the western portion of the Northwest Territories on June 27, 1921. With it, and the signing of the adhesions to this treaty, was concluded a process begun over 250 years earlier. Whether the process has been temporarily or permanently concluded remains to be seen.

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[25] Canada, Treaty No. 10 and Reports of Commissioners (Ottawa: Queen's Printer, 1966), p. 12.

[26] Canada, Treaty No. 11 with Adhesion and Reports (Ottawa: Queen's Printer, 1967), p. 7.

Be that as it may, and irrespective of the differences in actual terms contained within these treaties themselves, the clauses now constitute what the Indian people consider to be binding and inviolable commitments on the part of the Federal Government to provide universal, free education to Indians.

In short, these are their "treaty rights."

Treaty Rights as seen by the Indian People

> "To us who are treaty Indians there is nothing more important than our Treaties, our lands and the well being of our future generation... Our treaties are the basis of our rights...in exchange for the lands which the Indian people surrendered to the Crown, the treaties ensure the following benefits:...(c) the provision of education of all types and levels to all Indian people at the expense of the Federal government... the intent and spirit of the treaties must be our guide, not the precise letter of a foreign language... the Indian people see the treaties as the basis of all their rights and status."[27]

These statements, drawn from the "Red Paper" presented to Prime Minister Trudeau by the Indian Chiefs of Alberta in June, 1970, outline the reliance which the Indian people place upon the promises made in the treaties which their forefathers signed. It also indicates the way in which the Indian people interpret the promises that were made.

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[27] Indian Chiefs of Alberta, "Citizens Plus"; position paper prepared for presentation to the Rt. Hon. P. E. Trudeau, Ottawa, June, 1970, pp. 4-9.

Are both of these viewpoints valid? How binding are the commitments made in the treaties? Do they lead to the much broader interpretation which is now being placed upon them by the Indian people? Or are these treaties no more sacrosanct than any other normal piece of legislation enacted by the Federal Parliament?

Treaty Rights as seen by the Courts

In the United States, treaties must be ratified by Congress; in Canada, there is no need to have treaties brought before Parliament in order to have them ratified. Thus, combining the practices arising out of the Proclamation of 1763 and the power accorded to the Federal Government under Head 24, Section 91, of the British North America Act, to legislate on behalf of "Indians, and Lands reserved for the Indians," such treaty-making duties have never been queried within the Canadian context. Therefore that aspect of their legality is not in question.

How binding, then, is the wording of the treaties? Green quotes the judgement given in the United States case of Jones v. Meehan (1899) as being pertinent to this point:

> "In construing any treaty between the United States and an Indian tribe, it must always... be borne in mind that the negotiations for the treaty are conducted on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various estates known to their law, and assisted by an interpreter employed by themselves; that the Indian, on the other hand, are a weak and dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and

> whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter employed by the United States; the treaty must therefore be construed not according to the technical meaning of the words to learned lawyers, but in the sense in which they would naturally be understood by the Indians."[28]

In noting that Lord McNair, in The Law of Treaties, takes up this point with favor, Green goes on to state that "everything we know about the Indians and treaties suggests that they were understood by the tribes, as they have consistently been by their descendents, as constituting legal arrangements binding upon the Crown for all time."[29]

In Rex v. Wesley (1932), Mr. Justice McGillivray reiterated:

> "Assuming as I do that our treaties with Indians are on no higher plain than other formal agreements, yet this in no wise makes it less the duty and obligation of the Crown to carry out the promises contained in those treaties with the exactness which honour and good conscience dictate."[30]

Both from this point of view, and from that of a moral commitment on the part of the representatives of the Crown to live up to treaty obligations, Green's summary aptly clarifies this question:

> "... there is little doubt that at the time of signing both parties were using a term that they thought covered their relationship, that both intended to create legal obligations of a permanent character, that both carried out the terms of the agreements for many years, and that practice confirms that, whether they are treaties or not, they constitute mutually binding arrangements which have hardened

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[28] Green, op. cit., pp. 10-11.

[29] Ibid., p. 27.

[30] Cumming and Mickenberg, op. cit., p. 57.

> into commitments that neither side can evade unilaterally."[31]

Can Treaty Rights be Abrogated?

Secondly, then, there is the question - can those rights be abrogated? Whilst this point has never been raised before the courts in as far as it applies to education, it has been argued in respect of hunting rights.

On October 1, 1890, a recommendation by the Federal Minister of Justice to disallow a 1889 Northwest Territories Game Ordinance was approved by His Excellency the Governor-General in Council on the grounds that:

> "The Ordinance now under review purports to regulate and control the avocations of hunting and fishing by the Indians, as well as by other subjects of Her Majesty, and insofar as it relates to Indians is a violation of the rights secured to them by the Treaties referred to. The undersigned does not consider it necessary to discuss the propriety of these regulations or whether the Indians should be exempt from the regulations. It is sufficient to observe that the utmost care must be taken on the part of your Excellency's government to see that none of the treaty rights of the Indians are enfringed without their concurrence."[32]

More recently, the Indians' right to hunt for food has come into conflict with subsequent Federal legislation under the definition of 'out of season' hunting as specified under the Migratory Birds Convention Act (1952). In his judgement in the case of Regina v. Sikyea (1964), Mr. Justice Johnson of the Northwest Territories Court of Appeal noted:

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[31] Green, op. cit., p. 16.

[32] Cumming and Mickenberg, op. cit., p. 211.

> "It is always to be kept in mind that the Indians surrendered their rights in the territory in exchange for these (treaty) promises. This 'promise and agreement', like any other, can, of course, be breached, and there is no law of which I am aware that would prevent Parliament by legislation, properly within s. 91 of the B.N.A. Act, from doing so."[33]

He went on to point out that this Act did, in fact, breach the treaty agreements made between the Government and the Indian people of the Northwest Territories:

> "It is, I think, clear that the rights given to the Indians by their treaties as they apply to migratory birds have been taken away by this Act and its Regulations. How are we to explain this apparent breach of faith on the part of the Government, for I cannot think it can be described in any other terms? This cannot be described as a minor or insignificant curtailment of these treaty rights, for game birds have always been a most plentiful, a most reliable and a readily obtainable food in large areas of Canada. I cannot believe that the Government of Canada realized that in implementing the Convention they were at the same time breaching the treaties that they had made with the Indians. It is much more likely that these obligations under the treaties were overlooked - a case of the left-hand having forgotten what the right-hand had done."[34]

Treaty Rights and Provincial Legislation

There is, in view of the constitutional division of powers spelt out in the British North America Act, another aspect to this problem. Even though Federal laws may restrict or even abrogate "rights" granted under the treaties, can Provincial legislation do so as well? Section 88 of the Indian Act states:

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[33] Ibid., p. 217.

[34] Ibid., p. 217.

> "Subject to the terms of any treaty and any other act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act."[35]

In the 'out of season' duck-shooting case of The Queen v. George (1966), the Ontario Court of Appeal voted for acquittal on the grounds that Section 88 of the Indian Act made Federal legislation subject to the provisions of a prior Indian treaty. However, the Supreme Court of Canada did not agree, and Mr. Justice Maitland in handing down the decision pointed out:

> "This section was not intended to be a declaration of paramountcy of treaties over federal legislation. The reference to treaties was incorporated in a section the purpose of which was to make provincial laws applicable to Indians so as to preclude any interference with rights under treaties resulting from the impact of provincial legislation."[36]

These viewpoints obviously have general application, even through they were concerned specifically with hunting rights. And it must be noted that in the 'numbered' treaties of Western Canada, such potential conflict had already been prepared for - at least by the Crown's representatives:

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[35] Canada, The Indian Act, R.S.C., c. 149. (Ottawa: Queen's Printer, 1970), p. 4289.

[36] Cumming and Mickenberg, op. cit., p. 218.

> "Her Majesty further agrees with Her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered as herein before described subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada."[37]

Treaty Rights and Education

In respect of the educational clauses, some riders were also included. While the Federal Government promised to "maintain a school on each reserve" (not build or establish, contrary to the point made by Cumming and Mickenberg[38]) in Treaties 1, 2, 3, 4 and 5 and to "pay the salaries of teachers" in Treaties 7, 8 and 11, these promises, in Treaties 3, and 5-11, were made conditional upon such provisions being "deemed advisable" by the Dominion Government.

Further, the provision of these services, even the more embracing ones of teachers, schools and equipment (Treaty No. 9) and the general unspecified ones of Treaty No. 10, were also constrained by the words "for the education of the Indian children" or "to instruct the children of said Indians."

The Indian People wanted these educational services; of that there can be no doubt. Repeated references underscore their requests.

From Fort Garry in 1873 Morris reported:

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[37] Canada, Treaty No. 3, op. cit., p. 5.

[38] Cumming and Mickenberg, op. cit., p. 122.

> "... they wished a school-master to be sent to them to teach their children the knowledge of the white man"[39]

and at Fort Pitt in 1876:

> "The universal demand for teachers.... is also encouraging."[40]

Even later, at Lesser Slave Lake in 1899, the Commissioners reported:

> "(The Indians) seemed desirous of securing educational advantages for their children."[41]

and from Moose Factory in 1905:

> "John Dick remarked that one great advantage the Indians hoped to derive from the treaty was the establishment of schools wherein their children might receive an education."[42]

and yet again at Isle à la Crosse in 1906:

> "There was evidenced a marked desire to secure educational privileges for their children."[43]

Because of this congruence between the wishes of the Indian people and the Commissioners, such requests were readily granted, and in terms that were more generous than those which appear in the treaty documents themselves.

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[39] The Hon. Alexander Morris, The Treaties of Canada with the Indians of Manitoba and the Northwest Territories (Toronto: Willing and Williamson, 1880), p. 49.

[40] Ibid., p. 194.

[41] Canada, Treaty No. 8, op. cit., p. 5.

[42] Canada, The James Bay Treaty, op. cit., p. 9.

[43] Canada, Treaty No. 10, op. cit., p. 6.

At Qu'Appelle Lakes, on September 11, 1874, Morris stated:

> "Whenever you go to a Reserve, the Queen will be ready to give you a school and a schoolmaster."[44]

and he amplified this the following day:

> "The Queen wishes her Red children to learn the cunning of the white man and when they are ready for it she will send schoolmasters on every Reserve and pay them."[45]

The tendency on the part of the Crown's Commissioners to expect the Indians to understand that more than just the bare bones of the words of the treaty was being promised to them is emphasized in two later Reports. In Treaty No. 8 (1899) and again in Treaty No. 10 (1907), the almost identical sentence appears:

> "As to education, the Indians were assured that there was no need of any special stipulation over and above the general provision in the treaty, as it was the policy of the government to provide in every part of the country, as far as circumstances would permit, for the education of Indian children."[46]

They also went on to say that the law, "which was as strong as a treaty," would provide for non-interference with the religious affiliation of the schools "maintained and assisted by the government."

Indian Interpretation of Educational Rights

It is often asked how such basic and meagre provisions could be interpreted or construed as a "right" to "the provision of education of all types and levels to all Indian people at the expense of the Federal government"?[47]

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[44] Morris, op. cit., p. 93.

[45] Ibid., p. 96.

[46] Canada, Treaty No. 10, op. cit., p. 7.

In the first place, such 19th Century provisions must be considered in terms of the social needs and practices of the 1970's. On a parallel issue, for example, it has already been determined that by reason of the treaty promise to keep a medicine chest available at the Agent's house for the free treatment of Indians requiring such assistance (Treaty No. 6), the Indian people of Saskatchewan and Alberta may now receive comprehensive medical care without the payment of medicare premiums.

Secondly, as has already been pointed out, the intent of the promises, rather than their exact wording, has to be considered if the original undertakings of the signatories of the treaties are to be fulfilled.

And thirdly, the actions of the Federal government, and its servants, over the intervening years have to be considered. For indeed from such simple "acorn" beginnings have some mighty educational "oak trees" grown.

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[47] Indian Chiefs of Alberta, op. cit., p. 6.

CHAPTER IV

A BRIEF HISTORY OF INDIAN EDUCATION IN CANADA

As has been stated previously, there is an inescapable inter-relationship between educational services and the legal basis upon which these are provided and administered. Thus, the development of such services and the development of that basis through legislation both need to be reviewed in order that a comprehensive picture may be obtained.

With this in mind, a brief overview of the development of Indian education in Canada, followed by a similar overview of the corresponding development of legislation determining and affecting that education will be given in this chapter and the following one.

Indian Education in New France

From the earliest days of this country's association with its European population, Indian children and young people have been the focus of attention for some type of formal educational endeavor. Even before the founding of schools for the children of the immigrants, attempts were begun to provide schools and instruction for Indian youngsters.

An unnamed Jesuit priest in Acadia was involved in baptismal instruction as early as 1604, while Jesse Fleché, a secular priest, is reported as having baptised twenty-five Indians by June, 1610.[1] The

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[1] C. E. Phillips, The Development of Education in Canada (Toronto: W. J. Gage and Co. Ltd., 1957), p. 28.

Recollets (Begging Friars) established the first permanent mission in Canada at Quebec in 1615 and "what may perhaps be called the first schools, that of Brother Pacifique at Three Rivers in 1616 and that of Father Le Caron at Tadoussac in 1618, both for Indian children, of course."[2] (It was not until 1620 that a school for white children was opened in Quebec.)

However, setting a pattern that was to be repeated time and again in those early years, neither institution remained in operation for more than half a dozen years or so.

The Capuchin Order were active in the area of Indian education in Acadia from 1632 until driven out by the English in 1654, having opened a school at Port Royal and probably another at La Hève.[3]

In 1634, Father Julian Perrault, a Jesuit, opened the mission-station at Cape Breton and "gave religious instruction to the Micmacs, whom he found very attentive."[4] The Jesuits, having decided in 1635 to "found a seminary for young Indians for the purpose of civilizing or improving their moral condition"[5] began conducting classes at just such an institution in 1637 under the direction of Father Charles Lalemant. Situated at Fort St. Louis, it catered to both boys and girls from mainly Huron families, who were "taught to observe the customs of the French, such as joining their hands in prayers, kneeling or standing during the recitation of their lessons... at certain intervals a public meeting was held... and the pupils questioned on religious subjects. The most successful received a reward at the hands of the Governor, consisting of either a knife or an awl. They were called upon to kiss the Governor's hand, and to make a bow à la française."[6]

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[2] Ibid., p. 5.

[3] Ibid., p. 29.

[4] N. E. Dionne, Champlain-The Makers of Canada Series, University Edition, Vol. 1 (Toronto: Morang and Co. Ltd., 1911), p. 236.

[5] Ibid., p. 229.

The number of children in attendance, however, declined until only one was listed in 1642, although four young Hurons were sent to Quebec in 1643 in order to receive their instruction. While this seminary was closing, Madame de la Peletrie and the Ursuline Sisters had arrived in the French colony in 1639, and had begun the task of providing education to Indian children, but only the girls.

The Jesuits opened another seminary in 1650, this time at Three Rivers. But of the six pupils who began the year, none remained at its end, and Dionne delivered the verdict that "after eight years experience, the Jesuits realized that it was impossible successfully to make an Indian boy adopt the manners and habits of the French, and the same result was afterwards found by others who tried the experiment."[7] This did not prevent the opening in 1657, however, of another seminary at Chedabucto under the supervision of Father de Lyonne.

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[6] Ibid., p. 232.

[7] Ibid., pp. 233-4.

In 1668, the matter was given a new lease on life when Louis XIV, in a letter to Bishop Laval, offered encouragement in educating Indians to adopt French life styles. Accordingly, a Petite Seminaire for Indian boys was established at Quebec - an institution which was later to develop into the University which today carries the name of its founder. In 1684, the Bishop provided funds and three instructors to teach Indian women spinning and knitting, and in 1685, four more instructors to work with the increasing numbers of both Indian and French children.

Meanwhile, members of the Sulpician Order had opened an "industrial school" for Indians on Montreal Island in 1676, while the Recollets had extended their activities among the Montagnais and the Algonquins of the Saguenay, the lower St. Lawrence and the Ottawa Rivers. Thus, there is ample evidence to support the statement that "by the time that New France was absorbed into the British Empire in 1763, the Roman Catholic Church was widely involved in Indian education."[8]

This involvement by the Catholic church in the provision of educational services to the Indian people of Canada is one that, until most recently, has characterized its entire development. Even though the advent of English-language education for Indian children lagged well over 100 years behind that of the French, its eventual impetus was also provided through churches and their societies.

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[8] R. W. Connelly and J. W. Chalmers, "Missionaries and Indian Education," The Education of Indian Children in Canada (Toronto: The Ryerson Press, 1965), p. 12.

Early Indian Schools in the Maritimes

Phillips notes that since the time of the first English school in Nova Scotia at Annapolis, efforts had been made to educate and convert the Indians of the area. The Sisters of Congregation opened a school for Indian children at Louisburg in 1735[9] and, in 1765, a clergyman named Wood reported that "he was at work on a Micmac grammar."[10]

Efforts such as these to record, codify and provide basic formal instruction in Indian Languages as well as in English also seem to have been one of the themes of such early instruction, but it was a trend that later suffered some severe reversals. In addition, the idea of what today is called 'integrated' schooling - i.e. the joint education of Indian and white children - was also an early practice in Canadian education. On the one hand, it had some philosophical basis, for both French priests and English clergyman commented upon the desirability of such a system in which the 'model' provided by the white children facilitated the speed at which Indian children sloughed off their 'savage behavior' during the formal educational process. At the same time, of course, there was the practical consideration that such joint ventures catered for both potential school populations at a time when funds and facilities were hard to come by, and when charitable societies 'back home' were moved to provide such services for the education of

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[9] Joseph Katz, Society, Schools and Progress in Canada (Toronto: Pergamon Press Ltd., 1969), p. 64.

[10] Phillips, op. cit., p. 65.

'the young heathens' while the settlers had to provide themselves for whatever schooling their children received.

In New Brunswick, Indian education benefited from the outcome of the Revolutionary War when the New England Company transferred its operations to English-speaking Canada. It appointed a Board of Commissioners to carry out its aims of "educating and Christianizing (Indians) in the principles of the Protestant religion," and plans were made to establish three Indian schools, one at Woodstock, another at Westfield and a third at Sussex Vale. Although the schools were built and maintained by the New England Company, the instruction they offered was underwritten by the Society for the Propagation of the Gospel in Foreign Parts (afterwards known as the S.P.G.).

The Sussex Vale school was begun on July 4, 1787, and was probably the first one in that part of New Brunswick, since the 'white' school at Kingston was not started until November 28 of that year. However, this 'Indian' school catered to a mixed population from its inception, it being noted that in 1791, there were between twenty and thirty white children in attendance to eight Indian children.

The progress made by the school was apparently sufficient to encourage the New England Company to erect six Indian colleges across the province, at Sussex Vale and at Sheffield, Woodstock, Westfield, Chatham and Fredrickton. Rectors of these parishes were appointed as superintendents over the colleges. The experiment was too ambitious to enjoy a very long life, however, and by 1795 all but the Indian College at Sussex Vale were closed down.

The college programme consisted of "Reading, Writing, Mathematics and Natural Philosophy... a separate agreement will be made (for white students) who may wish to be taught Navigation, Surveying, and the Latin and Greek Languages."[11] In addition, Indian students were apprenticed to settlers to gain instruction in trades and farming, "a period of indenture which might be anywhere from four to fifteen years."[12] At the end of that period, however, the S.P.G. made provision for each young Indian to receive a full suit of clothes, one cow, a pair of steers, an ox, one hoe and an ax with which to begin their own adult working life. (It is of interest to note that while the farmers to whom they were apprenticed received about £20 a year for their involvement in the young Indian's agricultural education, Jeremiah Regan, "a gifted scholar, a master of the classics and a composer of music," who was to be in charge of the College from 1797 to 1817, was paid "ten pounds a year as teacher of the white children and for teaching the Indians he was paid sixteen pounds annually."[13])

The College began to receive grants from the New Brunswick Legislature after 1819, when it adapted the Madras System of teaching (involving instruction of the younger students by competent older ones).

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[11] Grace Aiton, "The History of the Indian College [illegible] Early School Days in Sussex Vale," Collections of the New Brunswick Historical Society, No. 18 (St. John, N.B.: Lingley Printing Co. Ltd., 1963), p. 161.

[12] Ibid., p. 162.

[13] Ibid., p. 163.

From then on, until its final closure in March 1826, it was known as the Indian Academy.

Indian Education in Upper Canada

During this same period, work was begun in the field of Indian education in Upper Canada. In 1784, on the Bay of Quinte, the S.P.G. established "what was probably the first Protestant school in the province, a school for the Iroquois who had come from the United States."[14] A year later, Chief Thayendanegea (Joseph Brant) not only initiated the building of a school for the children of other Iroquois loyalists on the Grand River, but also succeeded in having the teacher's salary paid from the military chest. This represented the first time that government money was used to finance any aspect of Indian education.

These developments also give some credence to the statement that "in 1784, when other parts of the province were without schools or churches, (the Six Nations Indians) were supplied with both."[15]

However, additional support was also obtained from the Church of England Missionary Society. In its first report, the Canadian Auxiliary Mission Society stated that "... about 100 adults of the Missisaugas have... erected a school with a view to afford their children the advantage of education. Native teachers have been employed for many years by the church missionary society, by which means a very considerable portion of that people can read intelligently in their native tongue. In a school at the Grand River, a Mohawk convert has been engaged for some time as a teacher."[16] In 1813, the school was closed, perhaps because of the proximity of the invasions of Canada, but a new school was started in 1824 at the same location, this time under the auspices of the New England Company, at the urging of Thayendanegea's youngest son, John Brant. Two years later, the Company also began work on a new school in the Mohawk Village near Brant's Ford (Brantford, Ontario), an institution which, following its opening in 1828, was to become both famous and infamous as the Mohawk Institute. Other schools in different parts of the Six Nations Reserve were also built and maintained, in part, by the New England Company.

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[14] Phillips, op. cit., p. 338.

[15] Duncan Campbell Scott, John Graves Simcoe - The Makers of Canada Series, University Edition, Vol. IV (Toronto: Morang and Co. Ltd., 1911), p. 74.

In 1827, schools for Indian children had also been established at Salt Springs and New Market, and in 1838 a school at Manitowaning was conducted by the Anglican Church. This operation was transferred to Sheguiandah in 1862.

At the same time, the Methodist Church was becoming involved in Indian education. Playter, in his History of Methodism in Canada tells that at Davisville on the Grand River "... the Mohawks were very anxious to have their children educated... a teacher was available but there was no place in which to have a school. Thomas Davis, an Indian chief, a noble-hearted man, offered his house for the school and retired to his log cabin in the woods. School started on November 17 (1824) and was attended by between twenty-five and thirty children. The regulations at the school were to begin and end with singing and prayers; to enforce decency of manners and cleanliness; and to prohibit improper language and conduct."[17]

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[16] Connelly and Chalmers, op. cit., p. 13.

The Methodists also opened an Indian school, which forty children attended, on the Credit River and it was here that Egerton Ryerson went, as a young missionary and teacher, in 1827. Another school, and one which typified the pattern that was to be followed throughout the West, was started by the Methodists during 1826-7 on Grope Island in the Bay of Quinte. This had a fifty-acre farm with seven cows and, in addition to religious education and the three R's, taught housekeeping, spinning, knitting, weaving and dairy management to the girls while giving instructions in general trade and agriculture to the boys.

Growth in Indian Education, 1820-45

The Roman Catholic missionaries had continued their activities in Indian education throughout areas of Lower Canada during the whole of this period, and they were also being supported by charitable and philanthropic organizations. In 1822, a resident of Three Rivers named Wagner, having already obtained £200 from overseas, requested 'rations or half rations' from the Governor for the support of Indian youths to be in attendance at a new school to be established in that area.[18]

At the same time, the pattern of missionary work in the field of Indian education in Western Canada began to emerge. Father Provencher arrived at Red River in 1818 and soon afterwards began conducting classes for young Indians, using his chapel as a school room. By 1821, it was reported that he and two companions had "introduced the teaching of Latin and shortly afterwards they began to give instruction in agriculture and weaving to the natives."[19]

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[17] Ibid., p. 12.

[18] Phillips, op. cit., p. 336.

In 1822, the Reverend John West, who served primarily as an Anglican chaplain for the Hudson's Bay Company, also opened a school at Red River, and in this he was aided by the Church of England Missionary Society. By 1824, four schools were in operation in the area.

1833 saw the opening of two more schools - one by Joseph Cook, whose mother was Cree herself, and the other at St. Eustache by Father Belcourt, who was credited with developing a Chippewa Language Grammar for use in his work. Shortly afterwards, in 1836, the Reverend James Evans, Superintendent of Methodist Missions in the West, produced the first books in the Cree language. After reproducing the basic sounds of Cree in an alphabet that consisted of eight consonants and four vowels, which could be represented by nine characters in variants of four positions, he cast the necessary type he required by using lead taken from tea chests and printing his grammar books and primers on birch-bark. Miss Adams, a fellow Methodist teacher-missionary in the Red River area, is credited, aided by her Indian students, with the production of 3,000 copies of the Gospels and four Epistles using these crude printing presses.

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[19] Ibid., p. 152.

The first Wesleyan Methodist Society School in the West was established at Norway House in 1840 by the Reverend Evans, together with two noted Indian converts, the Revefend Henry Steinhauer and the Reverend Peter Jacobs. Later that same year, the Reverend Robert Rundle, supported by the Western Society, opened school in the Edmonton area on September 15, with "twenty-five pupils who wanted to learn to read the Bible in their own language."[20]

Anglican mission schools amongst the Cree were organized at the Pas in 1840, and at Lac La Ronge and Isle à la Crosse in 1846, all by Indian people converted and educated to this end - Henry Budd, James Settee and James Beardy.

During this period, the establishment of schools for Indian students was beginning to blossom in many parts of the land. In January 1842, a Roman Catholic Indian school was opened at Wikwemikong on Manitoulin Island, with an enrollment rising to seventy-three by March of that year. During 1857, the Jesuit records noted that "two assistant teachers, Marie Mishibinishima and Margaret Itawigyuk leave for Montreal to further their education."[21] 1860 saw the opening of an English high school there, and work began on a girls school in 1861.

Ryerson's Report and the Development of the Industrial Schools

In 1845, a government report to the Legislative Assembly of Upper Canada recommended the adoption of a system of industrial boarding schools for Indian pupils, a system which received the enthusiastic support of the Anglican Bishop of Toronto and many of his missionaries. In 1847, the former young missionary at the Credit River School, now Dr. Ryerson and Chief Superintendent of Education for Upper Canada, issued a further report outlining in specific terms how these institutions should be run. He advocated a joint church-government operation, since "with (the Indian) nothing can be done to improve or elevate his character and condition without the aid of religious feeling." At the same time, he suggested the government take the responsibility for the inspection of the schools, the issuance of general regulations for their operation and, of course, contribute toward their general maintenance and operation. The church organization involved would manage the school, provide part of the operating costs and be responsible for the "spiritual guidance of the pupils." In concert, decisions would be made upon the erection of buildings, admission requirements, and the appointment of the school superintendent.

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[20] Connelly and Chalmers, op. cit., p. 13.

[21] Ibid., p. 16.

The curriculum suggested by Dr. Ryerson would devolve upon "a plain English education adapted to the working farmer and mechanic." In order to accomplish the ends of gaining an appropriate education, of learning the habits espoused within the Anglo-Saxon work ethic, and of enabling these schools to be as self-sufficient as possible, he suggested the following routine:

> "The children would rise at five in the summer, attend to the policing of the house, and have prayers and lessons in the school until seven, labour from eight until noon, dinner and intermission from twelve to one, labour from one to six, supper at six, lessons

> til eight, and retire to bed between eight and nine... The hours of rising might be later in winter than in summer."[22]

Arising out of these two reports, the first two Indian industrial schools were established. They were at Alnwick (Alderville) in 1848 and the Mount Elgin School at Muncey Town in 1849, both under the religious auspices of the Wesleyan Methodist Society.

Developments in the West

In the West, more and more missions schools were coming into existence. In addition to the advent of the work of the Oblate Fathers in 1845, Pigeon Lake saw Benjamin Sinclair open a Protestant mission-school in 1847, William Duncan of the Church of England Missionary Society began teaching the Indians at Port Simpson in 1857, the Grey Nuns opened mission schools at Lac St. Anne in 1859, and the Oblates instituted a school at Okanagan in the same year. The following year, 1860, the Grey Nuns extended their work to Isle à la Crosse and then to Prince Albert in 1862. In that year also, Father Lacombe began conducting classes in a log house within the walls of Fort Edmonton, while in 1863, Father Gendre of the Oblates became the first principal of St. Mary Mission School at Mission, B. C. 1863 was also the year in which William Duncan moved his school from Port Simpson to Metlakatla Island, where he was to teach and preach for the next twenty-five years, while the Methodist Reverend Crosby began his teaching of Indian children at Nanaimo. 1864 marked the year in which a Methodist school was established for Indian children at Pakan, although white and Metis children were also encouraged to attend.

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[22] H. J. Vallery, "A History of Indian Education in Canada" (unpublished Master's thesis, Queen's University, Kingston, Ontario, 1942), p. 15 (microfilm).

During the year which witnessed the passing of the British North America Act, the Grey Nuns opened another school, this one at Fort Providence, followed by still another at Lake Athabasca in 1874. While these activities were going on in the North, the Reverend McDougall was establishing a school for the Stoney Indians at Morley in 1872, and another was opened for the Blackfoot children at Fort Macleod in 1877.

Meanwhile, new schools were also continuing to open in other parts of the country. The Shingwauk Home at Sault Ste. Marie was opened by the Anglicans in 1874, the Roman Catholic Industrial School at Wikwemikong followed in 1877, while a year later, the doors of the new Manitoulin Island Industrial School were opened.

The first industrial school in the West was established in 1883 at Battleford, under the auspices of the Anglican Church. The following year, on behalf of the Roman Catholic, Father Lacombe began the industrial school at High River (Dunbow) while Father Hugonnard (of whom we shall hear more later) became principal at Qu'Appelle.

Indian School Growth, 1867-1973

From this point, the establishment of new schools, following the joint impetus of the provisions of the Western Treaties and the desire of the various churches to accelerate their own programmes of converting and teaching the natives, proceeded at an ever-increasing pace. In 1858, it had been reported that there were about thirty schools in operation, mostly in Upper and Lower Canada. By the time of the passing of the

British North America Act nine years later, this number of Indian schools had risen to fifty.

Based upon the figures listed in the Annual Reports of the Department of Indian Affairs, or those submitted to the Federal Parliament by the Superintendent General of Indian Affairs during that period when the Indian Affairs Branch found itself lodged under the auspices of a variety of other government departments, it is possible to now look at the development of the provision of school facilities for the education of Indian children in overall figures. (See Table 1)

At the same time, the growth of the Indian student population during this period indicates both total trends and fluctuations in the numbers of children in attendance, and their attendance at the different types of schools through which educational services have been offered. (See Table 2)

Influences on the Growth of Indian Education

During the course of this development of educational services to Indian children over the intervening years from 1616 to the present day, certain specific influences are to be noted. Some have been evidenced already; others still need to be mentioned. Broadly speaking, they can be identified under the following categories: (1) the influence of the churches; (2) policies of segregation and integration; and (3) the scope of Indian education.

The Influence of the Churches

As we have already seen, Indian education began with the advent in North America of missionaries of the Europeon churches. The concepts of education and evangelization proceeded hand in hand - the one being considered necessary to achieve the other. Attitudes towards Indian

Table I

Number of Indian Schools in Operation, 1881 - 1973

Year	No. of Day Schools	No. of Residential Schools*	Total No. of Schools
1881	(Not available)	(Not available)	114
1891	231	37	268
1901	226	64	290
1911	251	73	324
1921	253	73	326
1931	272	80	352
1940	282	77	359
1945	255	76	331
1950	365	67	432
1955	377	66	433
1960	381	66	447
1965	373	66	439
1970	332**	(65)***	332
1973	320**	(45)***	320

*Includes Industrial, Boarding, Residential Schools and Hostels.
**All Indian schools classified as "Day Schools" as of Sept. 1, 1970.
***Indian Student Residences only; no classroom facilities as of Sept. 1, 1970.

Table II

Number of Indian Children Enrolled in Indian and Provincial Schools
1881 - 1973

Year	No. Enrolled in Day Schools	No. Enrolled in Residential Schools	No. Enrolled in Provincial Schools	Total No. Enrolled
1881	(Not available)	(Not available)	(Not available)	4,126
1890	6,202	1,352	(Not available)	7,554
1901	6,121	3,455	(Not available)	9,576
1911	7,348	3,842	(Not available)	11,190
1921	7,775	4,783	(Not available)	12,558
1931	8,584	7,831	(Not available)	16,415
1940	9,140	9,027	229	18,396
1945	7,480	8,865	93	16,438
1950	12,551	9,316	1,542	23,409
1955	14,143	10,501	3,765	28,448
1960	22,049	9,109	9,479	40,637
1965	22,764	10,310	22,764	55,475
1970	26,393	-*	41,042	67,435
1973	28,103	-*	43,036	71,139

*All Indian students on reserves reported as being enrolled in "Day Schools" as of September 1, 1970.

people would seem to have been influenced, at least in Canada, not so much by the axiom that "the only good Indian is a dead Indian" but rather by its more subtle substitute - "the only good Indian is an educated (i.e. Christian) Indian."

On the other hand, what cannot be gainsaid, of course, is that the churches and their missionaries, supported by their philanthropic societies, did do the work of bringing educational services to the Indian people at a time when government and the settler society had other concerns.

Thus we can trace the strong involvement of the churches in this respect through the phases of early wilderness schools, the development of the industrial and the residential schools, the more rapid expansion of the day school system, and the legislation and regulations which provided the basis for the education of Indian youngsters.

Loosening the Bonds Between the Churches and Indian Education

As will be noted later, these legislative provisions are still very much extant, but the practical influence of the church has been diminishing since World War II and, in particular, since 1949.

It was on September 1 of that year that the traditional method of financing church-operated residential schools underwent its first major change. The Department began directly paying the salaries of teachers employed at three of these schools - a radical departure from the process whereby the teachers had heretofore been employees of the religious denomination operating the school. By September 1954, all teachers in residential schools had been placed on this footing, which now conformed to the way in which teachers in Indian day schools, with few exceptions, had been paid since the earliest days.

During this same period, beginning in September 1950, the use of provincial curricula and of textbooks authorized by the appropriate provinces began to be introduced into residential school classrooms. Prior to this development, the course of studies followed in Indian residential schools across the country was loosely based upon the Ontario requirements, but each of the religious denominations involved in the Indian education system - Roman Catholic, Anglican, Presbyterian, Methodist, United, Mennonite, Salvation Army - could, and did, supplement (even, in some cases, substitute largely) those suggested textbooks and materials with others which more effectively combined teaching with the teachings of a particular faith. (Day schools, on the other hand, had followed the respective provincial curricula since the 1920's.)

These steps, which led to the loosening of the direct operational and educational ties between church and state in Canadian Indian education, continued to be followed to the point where, as of April 1, 1969, residential schools ceased to exist as such. This meant that (a) the operation of the residential facility on, or adjacent to, any reserve was separated from the operation of the classroom facility (even though they might still be physically connected); (b) the church-designated administrator, whether clerical or lay, was now responsible only for the operation of the residence or hostel (previously that person had held the designation of 'principal' while the academic principal had been called 'senior teacher' and had been responsible to the 'principal'); (c) that church-designated administrator of the residence or hostel was now to be a Federal government employee instead of a church employee, and any future administrator would have to seek and secure the appointment under the terms of the normal competition rules for the Federal civil service; (d) those residences and hostels would lose their exclusive denominational status and become ecumenical in their provision of service to Indian students; (e) they would be budgeted for, funded, and operated on the same basis as any other Federal government facility; (f) the classroom facility would now become classified as a 'day school' and the principal (no longer the 'senior teacher') would be both completely responsible for its operation and subject to the same appointment procedure as all other Federally employed teachers.

In the case of the classroom facilities, these new regulations became effective as of the beginning of that new fiscal year in 1969. The residences and hostels, however, were given a two-year transitional period in which to adjust to the attitudinal and physical changes involved. Thus it was not until April 1, 1971, that these last direct links between the various religious denominations and the day-to-day provision for Indian education were severed after over 350 years of intimate involvement. (The question of the religious affiliation of day schools, as detailed under the appropriate section of the Indian Act, of course, was not affected by the change in status of the student residences or hostels.)

Policies of Segregation and Integration

From the beginning, as has already been noted, the Indian children have been, to varying extents, involved with the education of white children.

While we tend to think of this as a fairly recent innovation, this is only so in terms of the numbers of children involved.

As early as 1636, Father Le Jeune, principal of the Seminary of Notre Dame des Anges, was writing to his Provincial in France "... (the Indian children) will become so accustomed to our food and our clothes that they will have a horror of (their parents) and their filth. We have seen this exemplified in all the children brought up among our French. They get so well acquainted with each other in their childish plays that (the French children) do not look at them as savages."[23]

It has been noted how both the Indian School and the Indian College operated by the New England Company at Sussex Vale in New Brunswick, in spite of their appellations and the intention of their founders, were 'integrated' institutions throughout their joint thirty-five year history.

As the development of Indian education in the nineteenth and twentieth centuries progressed, there are constant references, in spite of philosophies and policies promoted by government leaders like Sir Francis Bond Head and the various religious denominations, indicating that Indian and white children, admittedly in small numbers and usually of necessity, were being educated together.

A section of the "Report on the Indian of Canada, 1845" reads: "there is not at present a school of any description in Caughnawaga but five boys of the tribe are educated at Christieville."[24] In 1878, the North St. Peters School was reported to have been "attended by White as well as Indian children."[25] In 1883, seventeen children from the Six Nations Reserve were reported attending white schools, while in 1907, the following report was given:

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[23] Dionne, op. cit., pp. 230-1.

> "On the Whitefish Lake Reserve a Methodist Indian Day School, known as the Naughton, which had been closed in consequence of a lack of pupils to justify its continuance, was practically reopened, but in amalgamation with a school for white children in the adjacent township of Graham, which experienced like inability to muster attendance sufficient to support a school. At Scugog no application has been made by the trustees of the school for white children on account of Indian attendants thereat, and arrangement made because the children on the reserve of school age are too few to support a school of their own."[26]

The following year it was noted "... and one (school) for whites has been subsidised at Shannonville with a view to providing educational facilities for the children of the Pyendinaga Reserve."[27] In 1909, the Department agreed to pay the tuition for Indian children attending the school at Scugog (an arrangement which continued until at least 1915), while in 1914, it was reported that in New Brunswick "... there are no Indian Day Schools on the other reserves but the Indian children are permitted to attend the neighboring white schools upon payment of a small tuition fee."[28]

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[24] L. G. P. Waller, "The Enrolment of Indian Children in Provincial Schools," The Education of Indian Children in Canada (Toronto: The Ryerson Press, 1965), p. 62.

[25] Canada, Report of the Deputy Superintendent-General of Indian Affairs, (Ottawa: MacLean, Rogers and Co., 1878), p. 9.

[26] Canada, Annual Report of the Department of Indian Affairs, 1907 (Ottawa: King's Printer, 1907), p. xxxii.

[27] Canada, Annual Report of the Department of Indian Affairs, 1908 (Ottawa: King's Printer, 1908), p. xxxiii.

In 1916, about 120 Indian children in Quebec and the Maritime provinces "where there are no residential schools" were in attendance at white schools, while in 1924, "the Department assisted in the maintenance of thirteen combined white and Indian schools."[29] In 1929, it was reported that "... last year, besides those (a total of 145) taking advanced work, there were approximately 225 Indian children attending white schools and orphanages."[30] The number of children involved remained at about this level, although diminishing somewhat during the War Years, until the early 1950's.

However, for the large majority of Indian children, the years between the birth of Confederation and the mid-way point of this century saw them receiving their education in the segregated atmosphere of the reserve. Here, both day and residential (or industrial) school staffs proceeded with the task of instilling knowledge into these youngsters in a setting that, on the one hand, required their parents to obtain signed permission from the resident Indian Agent before they could conduct any business or other sort of transaction with the nearest white community and, on the other hand, was protected from the 'trespass' of any unauthorized or undesirable white man.

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[28] Canada, Annual Report of the Department of Indian Affairs, 1914 (Ottawa: King's Printer, 1914), p. 122.

[29] Canada, Annual Report of the Department of Indian Affairs, 1923 (Ottawa: King's Printer, 1923), p. 8.

[30] Canada, Annual Report of the Department of Indian Affairs, 1929 (Ottawa: King's Printer, 1929), p. 18.

The recommendations arising out of the deliberations of the Special Joint Committee of the Senate and the House of Commons on the Indian Act, which held sessions between 1946 and 1948, brought about a gradual end to both the policy and the practice of enforced educational segregation for Indian children. It was put to the Committee time and again by the representatives of the various Indian Bands and groups from across the country that this was a necessary and desirable change in policy. The general tenor of these suggestions was typified by the submission of the Aboriginal Natives of the Fraser Valley and the Interior Tribes of British Columbia which called for:

> "The operation of day and residential schools be brought under Provincial jurisdiction, and to the same standard regulations and curriculum properly established, to the same efficiency of non-Native public schools and colleges, thus provide an adequate elementary education and proper technical training for Native pupils... Natives on Reservations adjacent to cities, municipalities, etc. be privileged to enter their children to the nearest Public School."[31]

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[31] Canada, Proceedings of the Special Joint Committee of the Senate and the House of Commons on the Indian Act, 1947 (Ottawa: King's Printer, 1947), pp. 52-3.

This new trend towards 'integrated education' has not always been developed in a way that has been acceptable to the Indian people, however, and particularly over the last ten years, has been receiving increasing criticism. In particular, concern has been voiced about the process being very much a "one-way street". As a result, there is evidence of a more recent desire on the part of some Indian parents and Band Councils to once more institute a system of reserved-based education - except that this time it would be on the basis of segregation by choice, not by edict.

The Broadening Scope of Indian Education

The education of Indian children, as we have already noted, was primarily to prepare them for Christianization and, for some, for the preaching of the Word to their fellow tribesmen. Allied with this Holy Zeal was always some type of other basic elementary instruction, so that perhaps it could be said that Indian education was traditionally based upon the four R's - reading, 'riting, 'rithmetic and religion.

The Sulpicians, as we have seen, introduced the idea of preparing Indian students for some type of vocation with their first attempts at an 'industrial' school at Montreal in 1676. This idea remained a part of the Indian education picture until World War I, but it was most popularly implemented during the period 1850-1910.

There has been the tendency to think of Indian students in terms of being provided with only these basic types of education - elementary and (rural) vocational - until the 1950's and the newer policies of integrated schooling. But again the records show a small but steady stream of Indian students achieving well-advanced levels of academic achievement over the years. In the face of the difficulties involved, this represents no mean feat for these little-known educational wayfarers.

Amongst others, the success of Thomas D. Green, of the Six Nations Reserve, "whose studies carried to and through the Brantford Collegiate, and then to McGill College, Montreal, from which he graduated this year with honours, including the degree of Bachelor of Science"[32] was reported in 1882.

In 1911, this same reserve had "three (students) now attending the Caledonia High School, one the Hagersville High School, four the Brantford Collegiate Institute, two the Brantford Conservatory of Music, two in the second year at McMaster University, one in the final year at Queen's Medical College, two in hospital training for nurses, four are teachers on the reserve, one is clerk in the Indian office, Brantford, two have graduated as nurses from John Hopkins Hospital, Baltimore, and two are practicing medicine in the United States."[33]

By 1915, the Six Nations Reserve had twenty-nine of their students taking similar courses of advanced education, whilst seven more were back teaching in schools on the reserve, including Elmer Jamieson, with a B. A. from McMaster University.

In 1925, the Annual Report showed that "125 Indian students were enrolled in high schools and colleges in Canada".[34] These numbers had increased to 145 by 1929.

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[32] Canada, Annual Report of the Department of Indian Affairs, 1882 (Ottawa: MacLean, Rogers and Co., 1883), p. 2.

[33] Canada, Annual Report of the Department of Indian Affairs, 1911 (Ottawa: King's Printer, 1911), p. 328.

[34] Canada, Annual Report of the Department of Indian Affairs, 1925 (Ottawa: King's Printer, 1925), p. 13.

In reviewing the Centenary of the Mohawk Institute in 1931 it was doted that this one school alone had produced fifty-five teachers, four ministers, three doctors, as well as other successful graduates from the Agricultural College in Guelph, and various other universities and colleges in both Canada and the United States.

Nevertheless, while students such as these were making this type of educational progress, the schools available on the reserves were not offering instruction at much more than a grade 5 level in the day schools and a grade 8 level in the residential schools. This condition generally pertained in these schools until the late 1940's when, again as a result of the impetus given by the Joint Committee hearings and recommendations, the urgings of the Indian people and the expanding outlook of departmental officials, regular provisions for post-grade 8 educational opportunities began to be made, both on and off the reserve. These developments are reflected in Table 3.[35]

These increases in the scope of educational opportunities for Indian students saw a similar rise in the number of Indian young people who went on to universities, colleges and other post-secondary institutions.

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[35] While these increases are significant in terms of the total number of Indian students involved, severe criticisms of the effectiveness of the education for Indian students at these grade levels have been made by many Indian parents and organizations. They stress that the "drop-out" statistics (approximately 92% of students entering Grade 1 do not graduate from Grade 12) indicate the extent of the frustration which still faces Indian students in secondary schools.

Table III

No. of Indian Students Enrolled in Grades 9-13, 1940-73.

Year	No. of Indian Students Enrolled by Grade					Total No. Enrolled
	Gr. 9	Gr. 10	Gr. 11	Gr. 12	Gr. 13	
1940	93					93
1950	283	37	38	11		369
1960	1,115	599	384	166	17	2,281
1970	2,925	1,950	1,246	674	39	6,834
1973						20,796*

*Total enrolment includes all Indian students from grades 7-13; enrolment by grade not available.

Because of the way in which the classification of these compiled figures has changed over the years, it is not possible to give a composite table of the number of students involved. However, it has been stated that in 1967, there were about 150 Indian students enrolled in fulltime university programmes, whilst in the current year, a total of 2,002 students are registered in fulltime university and college programmes, including almost 800 Indian students at universities.[36] In addition, another 2,662 are taking or have taken post-secondary courses of less than three months duration in the present year.

This means that the numbers of Indian students in secondary and post-secondary programmes has risen from the 145 reported in 1929 to over 28,000 in 1973. Another approximately 35,000 Indian people are participating in upgrading and adult education programmes.

In addition, the introduction of kindergarten and nursery school programmes for Indian children in the early 1960's has seen an expansion of services at both ends of the educational continuum, to the point where, in the current year, 8,215 Indian youngsters are reported enrolled in pre-grade 1 programmes.[37]

The range of programmes and options now available to Indian students is a far cry from the bare bones of the "four R's." In fact, as a result of the introduction into reserve school programmes of many locally initiated and structured programmes in Indian culture, history, heritage and customs, Indian children have now available to them not only the same scope of educational opportunities as their non-Indian peers, but an array of learning experiences that go beyond those normally available to others.

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[36] The Hon. Jean Chretien, "Statement on Indian Education"; text of speech delivered by the Minister of Indian Affairs and Northern Development, Ottawa, April 13, 1973, p. 13.

[37] Ibid., appendix, p. 1.

For the first time, perhaps, in an educational sense, Indian students are becoming "citizens plus."[38]

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[38] H. B. Hawthorn, in A Survey of the Contemporary Indians of Canada, first suggested that Indian people, because they possess certain additional rights as "charter members of the Canadian community", should be considered as "citizens plus". The Indian Chiefs of Alberta later used this term as the title of their "Red Paper", presented to Prime Minister Trudeau in June, 1970, in which they called for full, free education for all Indian people, with particular stress upon the cultural basis of that education.

CHAPTER V

THE DEVELOPMENT OF LEGISLATION AFFECTING INDIAN EDUCATION

"At the time of Confederation there was a small but significant body of legislation that could have served as a basis for further action."[1]

This assessment by a former Director of Education for the Department of Indian Affairs emphasises the two main aspects of that legislation, affecting the education of Indian children, which had been enacted before 1867; it was a miniscule amount but it did provide a potential basis for further legislation.

Thus, in reviewing this legislation, it is important to determine how "significant" it actually was, and to what extent it did foreshadow legislation passed after the advent of the *British North America Act*.

Early Legislation - 1820

The first recorded piece of legislation which had any impact on the education of Indian children was passed in New Brunswick on March 20, 1820, and even then it was incidental rather than specific in nature. At that time, an "Act to Confirm the Charter of the Madras School in New Brunswick"[2] was passed which, under Section 2, authorized "the Governor and Trustees of the Madras School in New Brunswick... to extend the benefits of the Institution to every part of the Province."

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[1] R. F. Davey, "The Establishment and Growth of Indian School Administration, "*The Education of Indian Children in Canada* (Toronto: The Ryerson Press, 1965), p. 3.

[2] New Brunswick, LX Georgii III, c. 6.

This followed on from the granting of the Madras School Charter in the previous year. Under the terms of the Charter, a school was to be established in St. John "for the instruction of youth of both sexes, and particularly the indigent, in the principles of true religion and useful learning." Under the auspices of the British National Education Society, a Corporation was set up to establish the school, to extend this system of education throughout the province, and to accumulate both private and public funds for the achievement of these ends.

As a result of this Charter, and the consequent Act, the Indian College at Sussex Vale, because of its adoption of the Madras system, became eligible for and "shared in the gifts of books sent from England and in the Legislative Assembly's grant for support."[3] The grant was for up to £50 towards the cost of the teacher's salary, but since the teachers at the time, Mr. and Mrs. Leggett, only received a joint salary of £40, presumably the grant was not totally expended.

Legislation in Upper Canada - 1824

In 1824, an Amending Act, passed by the Legislative Assembly of Upper Canada, made direct provision for assisting the education of Indian children in that province.

Eight years earlier, in 1816, a Common Schools Act had been passed which provided money, and regulations on how it should be distributed, for schools in Upper Canada. An Amendment to this Act, passed in 1820, reduced the operating grant from £6,000 to £2,500. Then, in 1824, as the result of a further Amendment to this Common Schools Act:

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[3] Grace Aiton, "The History of the Indian College and Early School Days in Sussex Vale," Collections of the New Brunswick Historical Society, No. 18 (St. John, N. B.: Lingley Printing Co. Ltd., 1963).

> "V. ... the provisions of the above recited Act... the same is hereby declared to extend to all schools that are now or may hereafter be established and kept among the Indians, who shall be resident within the limits of any organized county or township within this province, excepting such schools as shall or may be otherwise provided for."[4]

This section of the statute seemed to recognize, contrary to later interpretations, that Indian reserves or Indian lands within organized counties and townships could qualify for provincial grants. Since this was at a time when a number of "treaties" involving minor land surrenders to surrounding townships and counties were being made, perhaps this section of the Act was a reflection of an obligation to provide educational services to the Indian communities in return for the continuation of the process of land acquisition on the part of the province.

However, the rider that such grants would only be made where no other assistance was forthcoming would seem to indicate that the Office of the Superintendent General of Indian Affairs was insisting that Indian Bands utilize some of the money obtained in these land surrenders for their educational needs. (It should be noted that this was never a written condition in such "treaties", and thus was never a "treaty right" as it was in the case of the later Western treaties.)

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[4] Upper Canada, 4 George IV, c. 8, s. V.

In any case, Phillips[5] reports that there is a record of only two such grants ever having been paid under this section of the Act.

Legislation in the Maritimes, 1831-51

Prince Edward Island was the next to offer some support to the education of Indian children when, in 1831, its Legislative Assembly voted a sum of £50 to provide for the printing and distribution of primary books "in an Indian dialect."[6]

Nova Scotia authorized the appointment of Commissioners to assist with administration of the affairs of Indian residents in the province in 1842, and in 1851, revamped the Act to more clearly delineate some of their responsibilities and duties.

Thus, in addition to supervising and managing all lands set aside for Indians, and preserving them from encroachment, the Commissioners were empowered to work with the Chiefs of the Mic-mac Bands on the reserves and:

> "... aid them in the erection of a dwelling place for the chief, a school house and a place of worship."[7]

In addition, the Commissioners were given the authority to:

> "... make arrangements with the trustees or teachers of any schools or academies for the board and tuition

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[5] C. E. Phillips, *The Development of Education in Canada* (Toronto: W. J. Gage and Co. Ltd., 1957), p. 336.

[6] Ibid., p. 336.

[7] Nova Scotia, R.S. (1851), c. 58, s. 6.

> for Indian children desirous of education, the expense to be paid out of the funds at their disposal."[8]

Unfortunately, there appeared to be no records available of the number of Indian children who were accommodated under this section of the Act, nor of the schools or academies which extended instruction to such children. It may be assumed, however, that it was because some Indian children were already in attendance at these institutions that such provisions were made whereby tuition and boarding fees would now become available.

Legislation in Lower Canada - 1851

During that same year, 230,000 acres of Crown land were authorized to be "set apart and appropriated to and for the use of the several Indian Tribes in Lower Canada... without price or payment being required therefor"[9] and the province further provided that:

> "... there shall be paid yearly out of the Consolidated Revenue Fund of this Province, a sum not exceeding One Thousand Pounds currency, to be distributed among certain Indian Tribes in Lower Canada by the Superintendent General of Indian Affairs, in such proportions amongst the said Indian Tribes, and in such manner as the Governor General in Council may from time to time direct."[10]

Exactly how much of this money was involved is not known but "a portion of this was spent on Indian education."[11]

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[8] Ibid., s. 7.

[9] Lower Canada, 14 and 15 Victoriae, c. 106, s. 1.

[10] Ibid., s. 2.

[11] Davey, op. cit., p. 3.

Legislation in the Province of Canada - 1857

Perhaps the most significant piece of pre-Confederation legislation, however, was an Act "to encourage the gradual Civilization of the Indian Tribes of this Province" passed by the Legislative Council and Assembly of Canada (representing the combined provinces of Upper and Lower Canada) in 1857. It was significant for what it said about, on the one hand, Indian lands and provincial school districts and, on the other hand, how the securing of an education had certain implications for an Indian person.

On the subject of Indian lands, Section XV, stated:

> "It shall be lawful for the Council of any Municipality in Upper Canada, or the School Commissioners of any School Municipality in Lower Canada, on application of the Superintendent General of Indian Affairs, to attach the whole or any portion of any Indian Reserves in such Municipality to a neighboring School Section or District, or to neighboring School Sections or Districts, and such land shall thereupon become a portion of the School Section or District to which it may be attached, to all intents and purposes."[12]

To some, this has appeared as a laudable extension of provincial education services to Indian children. However, while this may be so, it would also seem to have been a way whereby Indian lands could be "attached" (expropriated) by adjacent municipalities without entering into the legal niceties of negotiating a "treaty" or "surrender" with the Indian people involved.

The other aspect of this section would be its implication that Indian people who remained resident on those reserves, or parts of reserves, which became school sections or districts would, at the same time as they received any extension of educational services, also become liable to pay the appropriate school tax. Had this happened, then reserve residents would have been in the same category as enfranchised Indians, since it was declared under the same Act that:

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[12] Canada, 20 Victoria, c. 26, s. 15.

> "Lands allotted under this Act to an Indian enfranchised under it shall be liable to taxes and all other obligations and duties under the Municipal School Laws of the section of this Province in which such land is situate."[13]

It was with the passage of this Act that it was spelled out, for the first time, where education, in the white man's eyes, would lead the Indian. The aim had been stated in general terms on many occasions - education would prepare the 'savage' for conversion for living a Christian way of life, and for a fuller citizenship; no longer would he need to be categorized as one of Her Majesty's "Red Children" or a "ward of the government." But in 1857 it became official.

Visiting Indian Superintendents, or Missionaries, or other suitable persons, could be named as "Commissioners for examining Indians", and if they reported in writing that:

> "... any such Indian of the male sex, and not under twenty-one years of age, is able to speak, read and write either the english or the french language readily and well, and is sufficiently advanced in the elementary branches of education and is of good moral character and free from debt, then it shall be competent to the Governor to cause notice to be given in the Official Gazette of this Province, that such Indian is enfranchised under this Act; and ... shall no longer be deemed an Indian within the meaning thereof."[14]

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[13] Ibid., s. 14.

[14] Ibid., s. 3.

Section IV of the Act added that any male Indian "over twenty-one and not over forty years of age," even though he did not have the necessary educational qualifications, but could speak "readily in english (sic) or french", and was sober, industrious, free of debts and "sufficiently intelligent to be capable of managing his own affairs" could also be examined and, if found worthy, likewise enfranchised.

Thus, education led directly to enfranchisement and enfranchisement, while it entailed the loss of Indian status, did give that fuller citizenship status, including the right to personal ownership of land and liability to taxes and prosecution for debt, enjoyed by other non-alien non-Indians.

One wonders if it was at this juncture tnat the Indian concept of their fellow 'educated' Indian as a "brown-skinned white man" was born.

Be that as it may, this "encouragement" Act saw the conclusion of educational law-making affecting Indian people prior to Confederation. Davey has provided an apt summary of these activities:

> "It is impossible to determine whether the cause of Indian education would have been advanced had the field of Indian administration been left with the provinces, for, in spite of some prodding by the Imperial Government, very little was accomplished by the Colonies under what even today appears to be enlightened legislation."[15]

Confederation and the Acts of 1868 and 1869

As had been noted in previous chapters, the necessity to deal with the "uninhabited" new areas of the Northwest Territories led to the assumption by the Federal Parliament of all matters affecting Indians and Indian lands under the British North America Act. In doing so, it acquired the responsibility for the 50 or so Indian schools already established in the existing Canadian provinces and, with them, the effect of these scattered pieces of legislation.

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[15] Davey, op. cit., p. 3.

Thus, the Superintendent General of Indian Affairs for the new Dominion of Canada (from 1878 to 1883 it was the Prime Minister) found himself bequeathed a variety of these institutions, some having been partly financed by the Imperial Government, some having benefited from a modicum of provincial support, some relying on Indian Band funds, many being supported by a religious or charitable institution, and most with mixed Indian and white populations.

What had gone before had some effect on what was developed by the new administration, for in one of its first pieces of legislation - an "Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordinance Lands". (May 22, 1868) - the Governor General in Council was authorized to use moneysaarising from the sale of Indian lands for "contribution to schools frequented by such Indians."[16]

The following year, an "Act for the gradual enfranchisement of Indians, and the better management of Indian Affairs" (June 22, 1869) began to move in the direction of delegating some of the responsibility for their own affairs to the Indian people. Chiefs, or Chiefs in Council, were given the opportunity, subject to confirmation by the Governor General in Council, to frame rules and regulations concerning, amongst other things, "the construction of and maintaining in repair of school houses, council houses and other Indian public buildings."[17]

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[16] Canada, 31 Victoria, c. 42, s. 11.

The Indian Act of 1876

The first Indian Act, which amended, consolidated and added to laws already in existence affecting Indians, was assented to on April 12, 1876. While it added nothing new to legislation pertaining directly to Indian education, Davey is in error when he states that "this latter provision (section 12 (6) of the Act of 1869) was the only reference to schools or education to be incorporated into the first Indian Act of 1876."[18]

This authority for the Chiefs or Chiefs in Council certainly appeared in the new Act as subsection 6 of section 63, but so also did the provision for the Governor General in Council to use land surrender moneys for contributions to schools (s. 11, c. 42, 1868). It became section 59 of the Indian Act of 1876.

In addition, the aim of these educational provisions were the same as they had been twenty years earlier. Although some important refinements had been added, this Act also expected enfranchisement to be the end result of the educational process:

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[17] Canada, 32 Victoria, c. 6, s. 12 (6).

[18] Davey, op. cit., p. 4.

> "Any Indian who may be admitted to the degree of Doctor of Medicine, or to any other degree by any University of Learning, or who may be admitted in any Province of the Dominion to practice law either as an Advocate or as a Barrister or Counselor or Solicitor or Attorney or to be a Notary Public, or who may enter Holy Orders or who may be licensed by any denomination of Christians as a Minister of the Gospel, shall ipso facto become and be enfranchised under this Act."[19] (underlining added)

Whether this new provision was based upon past experience in terms of what had happened to Indians who had been enfranchised on the basis of an elementary level of education, or even on the qualified ability to speak "readily" either English or French, is not explained. It did emphasize, however, that any Indian with a significant amount of advanced education would automatically become a non-Indian. It also seemed to imply that there obviously were some Indian people operating at these educational and professional levels, and it was intended that they should not have the benefits of living in both worlds.

In passing, one has to take issue with Davey on another point he makes concerning this *Indian Act* of 1876. Noting that the programme of treaty-making had been undertaken with the Indians of the West, including some commitment to an 'educational programme', he feels that:

> "... as a consequence, legislation in some detail could reasonably have been expected. But the Act was silent on such matters as the establishment of schools, the employment of teachers, curricula or indeed any of the other numerous matters which relate to an educational programme."[20]

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[19] Canada, 39 Victoria, c. 18, 86 (1).

[20] Davey, op. cit., p. 4.

In retrospect, perhaps it is hardly surprising that the Act 'was silent' on these matters, since so were the treaties themselves! Up to the time of the passage of the Act, only five such treaties had been signed, and the extent of their commitment was merely "to maintain a school-house" on reserves when the Indians desired and were ready for it. Since previous legislation had barely encompassed more than was reiterated in this Act, and the educational provisions in the existing treaties gave no hint of what was to be needed in the years ahead, perhaps the "silence" was understandable.

The Indian Act of 1880

Four years later, the Indian Act of 1880 saw the extension of the power of Chiefs or Chiefs in Council to make rules and regulations concerning, amongst other things, the education of Indian children. It was now decreed that the Indians could determine:

> "As to what religious denomination the teacher of the school established on the reserve shall belong to; provided always, that he shall be of the same denomination as the majority of the Band; and provided that the Catholic or Protestant minority may likewise have a separate school with the approval of and under regulations to be made by the Governor in Council."[21]

In paragraph 7 of that same section, the authority to construct and repair school-houses was again reiterated.

The intent of these expanded powers would seem to have been to induce the Indian people to move into some more significant areas of educational participation. Correspondence between certain Indian Band Councils and the Department of Indian Affairs (which will be noted in later chapters) indicates that the Indian people were already beginning to express themselves on this subject of which churches (even, in some cases, whether churches) should be involved in the education of their children. There was also the fierce competition between the various faiths for the souls of the Indian people and the bodies of the Indian children - competition that led to complaints and petitions being directed to the office of the Superintendent General of Indian Affairs for settlement. This section of the Act now put the decision-making process at the local level.

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[21] Canada, 43 Victoria, c. 18, s. 74 (1).

It also, of course, extended the separate school question, already covered in respect of provincial jurisdiction in education under section 93 of the British North America Act, to the Indian community. The reiteration of the paragraph concerning construction and repair of school-houses as being a Band Council responsibility also made it clear that if the Indians wished to have additional separate schools on the reserves, then they would have to provide them, since the Treaty terms only obligated the Federal Government to 'maintain' the schools once they were erected.

On the question of education and enfranchisement, one important modification was added to the section which had appeared in the 1876 Indian Act. Now appearing as section 99 (I), the appropriately educated Indian person no longer would "... ipso facto become and be enfranchised" but rather he might "... upon petition to the Superintendent General, ipso facto become and be enfranchised." This amendment would seem to have recognized that the element of enforced enfranchisement linked to specific educational qualifications was perhaps unworkable and/or undesirable.

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The Acts of 1884

1884 saw the passage of two Acts affecting Indian people. In the first, amendments to the Indian Act of 1880 included one that had a direct influence upon Indian people engaged either in the professions or in the teaching of children in reserve schools. Under section 36 of the Indian Act, the Superintendent General was given the power to lease the lands of "aged, sick and infirm Indians and widows or children left without guardian" for their "support or benefit." This provision was now extended to cover the leasing of lands of Indians "engaged in the practice of any one of the learned professions, or in teaching school, or in pursuing a trade which interferes with their cultivating land on the reserve."[22]

Also under the Act, the powers previously given to Chiefs and Chiefs in Council to make regulations concerning education on the reserves was extended to cover the making of rules concerning the attendance at reserve schools of children between the ages of six and fifteen. This was the first time that any specific mention had ever been made about what the school age of Indian children should be, and it would prove to be a significant bench-mark for later Acts and regulations.

A second Act, assented to on the same day (April 19, 1884), and known as the Indian Advancement Act, was designed to encourage "advanced" Indian Bands, both in the older provinces and in the Northwest Territories, to exercise more municipal authority.

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[22] Canada, 47 Victoria, c. 27, s. 8.

It conferred upon Bands who were adjudged to be qualified for inclusion under its provisions the same authority to make rules and regulations concerning educational matters as were outlined under the Indian Act. For a number of years to come, this pattern of dual acts concerning 'advanced' and regular Indian Bands would now be followed, but the provisions in respect of the education of Indian children would remain identical in each Act.

The Amendments of 1894

Amendments to the Indian Act passed in 1894 would indicate that more "muscle" needed to built into the regulations concerning attendance.

Whether this was because Band Councils were reluctant to make such regulations, whether the regulations they did make were ignored or unenforced, whether the Indian people generally were resistant to or apathetic towards attempts to provide education for their children (as some Indian agents were reporting in their correspondence) or whether the after-effects of the second Riel Rebellion were still a major concern, particularly in Western Canada, it is difficult to determine.

In any case, a new section, number 137, was added to the Indian Act under which the Governor in Council was now empowered to make regulations:

> "... either general or affecting the Indians of any province or any named band, to secure the compulsory attendance of children at school.
> 2. Such regulations, in addition to any other provisions deemed expedient, may provide for the arrest and conveyance to school, and detention there, of truant children and of children who are prevented by their parents or guardians from attending: and such regulations may provide for the punishment, upon summary conviction, by fine or imprisonment, or both, of parents and guardians, or parents having the charge of children,

> who fail, refuse or neglect to cause such children to attend school."[23]

This clause was much more specific and punitive than the first general reference to attendance included in the Act of ten years previously. It was re-enforced by the addition of a second new section, number 138, of the Indian Act which spelled out just what sort of schools children detained under these new regulations would attend. The Governor in Council was given the authority to:

> "... establish an industrial school or a boarding school for Indians, or may declare any existing school to be such industrial or boarding school for the purposes of this section.
> 2. The Governor in Council may make regulations, which shall have the force of law, for the committal by justices or Indian agents of children of Indian blood under the age of sixteen years, to such industrial school or boarding school, there to be kept, cared for and educated for a period not extending beyond the time at which such children shall reach the age of eighteen years.
> 3. Such regulations may provide, in such manner as to the Governor in Council seems best, for the application of the annuities and interest monies of children committed to such industrial school or boarding school, to the maintenance of such schools respectively, or to the maintenance of the children themselves."[24]

Moreover, it can be seen that, in these certain cases, the compulsory age of school attendance was now set at eighteen - an upper limit, as later references will show, that was frequently ignored by both the schools and the Department. In addition, the finances available to these schools would now be supplemented by any Band funds to which the children thereto committed were entitled or became heir. Whether this led to the commitment of particular children, it is not possible to determine. That it may have influenced the prolonged detention of some children does, however, seem possible, since later correspondence will show concern over the continued appropriation of such annuities even after some of the children involved had left the schools.

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[23] Canada, 57-58 Victoria, c. 32, s. 11.

[24] Ibid., s. 11.

The Indian Act of 1906

Twelve years later, the *Indian Act* of 1906 became the first to contain sections under the specific heading of "Schools." Under this heading, the sections just discussed reappeared as sections 9, 10 and 11 of the Revised Statutes, c. 43.

In addition, the *Act* was now divided into two parts. Part I was equivalent to the former *Indian Act* itself whilst Part II contained those sections which previously had constituted the *Indian Advancement Act*. In Part I, the Governor in Council was authorized to provide for the general management of Band funds in the matters of "the construction and repair of school-houses," even though in both Parts I and II, Band Councils still retained *their* responsibility for framing rules and regulations concerning these matters. They were still responsible for ordinary attendance regulations for children between the ages of six and fifteen.

The Amendments of 1914

Amendments to the *Act*, passed in 1914, gave authority to the Governor in Council to considerably extend the scope of declaring which schools should be Industrial Schools, even to the apparent extent of going beyond the confines of the reserve. The following constituted the clause that was to replace the repealed section 10 of the 1906 Act:

> "The Governor in Council may establish an industrial school or a boarding school for Indians, or may declare any school or institution where children are provided with board and lodging as well as instruction, and with the managing authorities of which the Superintendent General has made an agreement for the admission of an Indian child or children, and for the inspection of the school or institution, to be an industrial school or boarding school for the purposes of this and the next following section."[25]

In addition, a new section (No. 11A) was added to the Act declaring that:

> "The Governor in Council may take the land of an Indian held under location ticket or otherwise, for school purposes, upon payment to such Indian of the compensation agreed upon, or in case of disagreement such compensation as may be determined in such manner as the Superintendent General may direct."[26]

Land held under a location ticket (i.e. usually land specifically allotted to an enfranchised Indian, and set aside from the communal land of the rest of the reserve) could now be expropriated for school purposes. Whether this measure was especially directed at the enfranchised Indian who continued to reside within the geographical boundaries of the reserve, is not known. What is evident, however, is that the term "compensation" omitted to specify an alternative land allotment and, as such, was perhaps intended to insure that such "location ticket land" should return to the general land holdings of the Band.

The Amendments of 1920

In 1920, amendments to the Indian Act made specific refinements, and some important additions, to some of these previous clauses. The Governor in Council could now establish (not just maintain) day schools on any Indian reserve in addition to industrial and boarding schools; he could provide for the transportation of Indian students to and from industrial schools; and he could make regulations "prescribing a standard for the buildings, equipment, teaching and discipline of and in all schools, and for the inspection of such schools."[27]

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[25] Canada, 4-5 George V, c. 35, s. 1.

[26] Ibid., s. 2.

In addition to these departmental powers of inspection, the Indian people were, for the first time, extended a legal "right" to see for themselves what went on in the schools. It was spelled out that:

> "The Chief and Council of any Band that has children in a school shall have the right to inspect such school at such reasonable times as may be agreed upon by the Indian agent and the principal of the school."[28]

Again, how far this "right" was exercised or even, as has been implied, prevented from being exercised by the inability of the parties concerned to agree upon a "reasonable time" for such inspections, cannot be determined. What is known, however, is that certain Indian Bands, particularly in Ontario, obviously had been visiting, if not actually inspecting, schools in operation on their reserves for a number of years prior to the passage of this Act.

The law in respect of attendance was considerably refined and made more specific. It now prescribed compulsory attendance between the ages of seven and fifteen at the "nearest school" of the child's religious affiliation, authorized the Superintendent General to appoint truant officers who could "enter any place" where children might be, and laid down the penalties for keeping children out of school.

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[27] Canada, 10-11 George V, c. 50, s. 1.

[28] Ibid., s. 1 (5).

At the same time, it was beginning to be recognized that there could be circumstances in which such blanket prescriptions might not be warranted. Consequently, this section of the Act also contained clauses exempting from penalty the parents of children who were sick or unavoidably absent, who had passed the high school entrance examination, or who had been excused by the Indian agent or the teacher for temporary husbandry or household duties.

Other sections of the existing Indian Act pertaining to education remained intact and unamended, and they all passed largely unchanged into the new Indian Act of 1927.

The Indian Act of 1927

However, what seems to have been a growing discrepancy over the years between the authority given to Band Councils to frame rules and regulations and the authority of the Governor in Council to legislate in the same area (e.g. in the case of school attendance) was even more marked in the revised Indian Act of 1927.

Section 1 of the 1920 Act now became section 10 of the Revised Statutes of 1927, c. 81. Under this section, truant officers appointed by the Superintendent General could bring parents before a justice of the peace or an Indian agent where the non-attendance of children had been established, and the maximum penalty upon conviction would be a fine of $2.00 or ten days imprisonment, or both.

On the other hand, under the sections dealing with the authority of the Chiefs or Chiefs in Council to make rules and regulations, in particular on the matter of attendance at school of children between the ages of six and fifteen, it was stated:

> "2. The Governor in Council may by the rules and regulations aforesaid (i.e. made by the Council) provide for the imposition of punishment by fine, penalty or imprisonment, or both for violation of any such rules or regulations.
> 3. The fine or penalty shall in no case exceed thirty dollars, and the punishment shall in no case exceed thirty days."[29]

While it is unlikely that the fines and/or imprisonment for similar offenses committed under different sections of this Act would be allowed to be at variance, yet the opportunity for such a situation to arise was apparently created.

The Amendments of 1930 and 1933

Amendments to that form of the Indian Act, inasfar as they affected education, appeared only on two occasions before the entire Act was extensively rewritten in 1951. In 1930, the provision that the annuities or interest moneys of children attending industrial or boarding schools should go towards the operational costs of the school was revoked, and the section reworded so that those moneys had to be applied only to the maintenance of the child concerned.[30] At the same time, the age of compulsory attendance under section 10 was changed to "between seven and sixteen."[31]

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[29] Canada, R.S.C. (1927), c. 81, s. 101.

[30] Canada, 20-21 George V, c. 42, s. 1.

Once again, however, that discrepancy appears. For while the ages in this section were amended, section 101(1)(f), under which Band Councils could make regulations concerning attendance of children between the ages of six and fifteen, was overlooked or ignored.

This could have given rise to a situation in which children six years of age could have been compelled by Band Councils to attend school and, through failure to do so, their parents could have been fined $30.00 or given thirty days, or both, even though such compulsion was now outside the power of the Superintendent General of Indian Affairs. On the other hand, it would have seemed possible for a sixteen year old, even though not compelled to go to school by a Band Council regulation, to have caused his parents to be fined $2.00 or given ten days, or both, by being in contravention of the powers given to the Superintendent General.

The only other amendment of the period came in 1933, when members of the Royal Canadian Mounted Police and special constables appointed for police duties on reserves were designated as truant officers.[32]

For almost the next twenty years, these legislative provisions governed the administration of educational services for Indian children across Canada. It was not until 1951, after an exhaustive review of the of the entire situation pertaining to Canada's Indian people by the Special Joint Committee of the Senate and the House of Commons, that a new Indian Act was formulated and passed into law.

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[31] Ibid., s. 3.

[32] Canada, 23-24 George V, c. 42, s. 1.

The Indian Act of 1951

In this new Act, the sections pertaining to education covered the areas of (a) operation of schools both on and off the reserves, (b) attendance, truancy and penalties for truancy and (c) separate schools and religious denomination of teachers. When one considers that these topics are all covered in ten brief sections, including one devoted merely to the definition of terms appearing in the other nine sections, and compares this to the size of the respective Acts covering Provincial educational provisions, the conclusion could be reached that either the education of Indian children is an undertaking calling for a much more simplistic approach or that the education of other children is overly prescribed.

In any case, this moderation in respect of the volume of law affecting the Canadian Indian was not a new phenomenon. Over thirty-five years before, Frederick Abbott, carrying out a survey of the Indian situation in Canada on behalf of the United States Board of Indian Commissioners, had reported:

> "Canada has an Indian Act; it is contained in fifty-four pages and is fully indexed. A thousand such pages could not contain the Indian law of the United States.
> The regulations in the form of instructions to Indian agents in Canada are contained in ninety-two short paragraphs which would fill less than three columns of a newspaper. A Sunday edition of a New York newspaper would not contain the rules and regulations of the United States Indian Service.
> The Canadian Indian school regulations are contained

> in a booklet of eight pages, which would occupy little more than one column in a newspaper. The regulations of the United States Indian schools fill forty-two pages.
> I could have brought Canada's laws, rules and regulations relating to Indian administration all back to Washington with me in my coat pocket."[33]

General Powers of the Minister

What were the main changes in the 1951 Act affecting Indian education? The two major ones were that (a) the minister in charge of Indian affairs could now enter into agreements whereby the day-to-day administration of Indian education could be transferred to provincial or territorial governments or to individual school boards within provinces and territories, and (b) the previous two-barrelled system which enabled both the minister and Band Councils to frame rules and regulations relating to education was ostensibly abolished.

Section 114 of the Act[34] gave the Governor in Council the power to authorize the minister, in addition to operating schools on reserves to enter into agreements with:

> "(a) the government of a province, (b) the Commissioner of the Northwest Territories, (c) the Commissioner of the

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[33] Frederick H. Abbott, The Administration of Indian Affairs in Canada (Washington, D.C.: Department of the Interior, 1915), p. 21.

[34] The sections affecting education were numbered 113-122 in the original 1951 Indian Act, and they appear in this fashion in the "Office Consolidation" booklet of the Act which is commonly used for reference purposes. The Amending Act of 1956 led to the renumbering of s. 66 (A) as s. 67, thus effectively renumbering all the following sections of the Act. They appear in this corrected form in the copy of the Indian Act (Ottawa: Queen's Printer, 1970).

> Yukon Territory, (d) a public or separate school board and (e) a religious or charitable organization."[35]

This official expansion of the number of agencies which could provide educational services to Indian children was the most significant section of the new Act and, in the eyes of a number of observers, returned the involvement in Indian education to the constitutional position it had been in prior to Confederation. Primarily it provided the opportunity for the offering of a single delivery system of educational services to all children resident in a province, irrespective of whose "responsibility" they were.

This does not mean, as has been increasingly apparent, that Indians would now become a "provincial responsibility" in the sense that the Federal government could opt out of the commitments made to the Indian people under the treaties, or the obligations imposed upon it by the British North America Act. What it intended was that the Federal government would continue to provide the funding, both for capital and operational spending, to establish and maintain all classrooms used by Indian students. As more and more of these students became enrolled in provincial schools, or had their reserve schools operated by provincial systems, the twin systems of Federal and provincial education in this area could be merged into one.

Section 115 retained for the minister (as Superintendent General of Indian Affairs) the powers he had had previously to make rules and regulations concerning the operation and inspection of schools, the transportation of students, the operation of residential schools by religious organizations, and the application of "moneys that would be otherwise payable to or on behalf of a child who is attending a residential school to the maintenance of that child at that school."[36]

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[35] Canada, R.S., c. 149, s. 113 (2).

Religious Affiliation of Indian Schools

The religious denomination of the teacher would be that of the majority of the members of the Indian Band involved (or that which they so designated), and the opportunity for the provision of a separate school for the religious minority was there if "in the opinion of the Governor in Council, the number of children of school age does... so warrant".

The further protection of religious rights was continued by insuring that, without written parental consent, no child should be assigned to attend a school not operated under the auspices of the church of his or her parents' faith.

In passing, however, it needs to be noted that the irrelevancy of these sections was eloquently emphasized to the members of the Joint Committee when they were considering this new version of the Indian Act. Chief Teddy Yellowfly, of the Blackfoot Reserve in southern Alberta, pointed out that this existing section of the earlier Act dealing with this question:

> "... overlooks the fact that some Indians very definitely have a religion of their own, which to them contains deep beauty and consolation. If an Indian is an adherent to his

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[36] Ibid., s. 114 (d).

> native religion, what are you going to do with his children? In a country that advocates freedom of religion, are you going to force that Indian to become a hypocrite by assuming a veneer of either of the religions mentioned in the Act, particularly if he is a better Indian by respecting the sanctity of his real beliefs?"[37]

Attendance and Truancy

The remaining education sections dealt with age of attendance at school, which was confirmed as being between seven and sixteen, although the minister could "permit" six year olds to attend and could "require" attendance to continue until the age of eighteen in certain cases; circumstances for permitting non-attendance, such as sickness, passing high school entrance examination, engagement in husbandry and household duties (up to six weeks), being under "efficient instruction" at home or elsewhere, and lack of school accommodation: and both what might and should be done in the case of truancy.

Truant officers (members of the RCMP, special constables on reserves, and "a school teacher and a chief of the band when authorized by the Superintendent"[38]), having the powers of a peace officer, might still search premises for children believed to be truant and might "convey the child to school, using as much as force as the circumstances may require."[39]

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[37] Canada, Proceedings of the Special Joint Committee of the Senate and the House of Commons on the Indian Act, 1947 (Ottawa: King's Printer, 1947), p. 552.

[38] Canada, R.S., c. 149, s. 122 (a).

[39] Ibid., s. 118 (6).

Where children, after the appropriate warning notice, do not attend school regularly, the parent, upon summary conviction, may be fined to a maximum of $5.00 or imprisoned to a maximum of ten days, or both.

What makes this section, and the following one, different from previous acts dealing with the same subject, is the clause that states that "a child who is habitually late for school shall be deemed to be absent from school"[40] and section 120 which asserts:

> "An Indian child who
> (a) is expelled or suspended from school, or
> (b) refuses or fails to attend school regularly, shall be deemed to be a juvenile delinquent within the meaning of the Juvenile Delinquents Act."[41]

Commentary on the implications of these sections will appear in later chapters of this study.

Sections Qualifying the Educational Provisions

Three other sections of this Revised Indian Act have implications for the education of Indian children. It was mentioned earlier that the conflict of the minister and the Band Council in framing school regulations was eliminated. But under section 69, the Governor in Council may permit a band "to control, manage or expend in whole or in part its revenue moneys"[42] and, under section 83, the Band Council, when declared to be in an "advanced stage of development", may make by-laws relating to "the appropriation and

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[40] Ibid., s. 118 (5).

[41] Ibid., s. 119.

[42] Ibid., s. 68 (1).

and expenditure of moneys of the band" and "the appointment of officials to conduct the business of the council."[43]

These two sections have had the effect of making it possible for many Band Councils to become actively involved in school matters within the context of the powers already established for the minister.

The third section is one of prohibition. It states: "Sections 114 to 123... do not apply to or in respect of any Indian who does not ordinarily reside on a reserve or on lands belonging to Her Majesty in in right of Canada or a province."[44]

The effect of this section on the provision of education for Indians and their children who are classified as living "off-reserve" has major implications, as will be seen later.

The 1956 Amendments

The provisions as laid out in this Indian Act of 1951 have remained largely unaltered over the last twenty-two years, with the exception of three amendments affecting education in 1956. One of these dropped the passing of High school entrance examinations as a valid reason for excusable absence; a second lowered the age of compulsory attendance by now authorizing the minister to "require" six year olds to be at school; while the third merely reversed the order of the two paragraphs which constituted the first section of those clauses dealing with Indian education.

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[43] Ibid., s. 82 (b) and (c).

[44] Ibid., s. 4 (3).

But this reversal of the two paragraphs, while not altering the content of that section 114, must be considered as having some importance concerning the intent of its provisions.

In the administration of Indian education, the minister's first charge now is, having been duly authorized by the Governor in Council, to enter into agreements with those other non-Federal government agencies previously alluded to in order to provide for the education of Indian children. Then, secondly, he may establish, operate and maintain schools for Indian children on reserves.

The significance of this reversal of paragraphs may be disputed, or dismissed, as being overly emphasized. However, the effect of the application of this first charge to the minister has resulted in a number of different results.

In the first place, the acceptance of Indian students into provincial and territorial school systems rose dramatically between 1956 and 1970 - a development warmly welcomed by those who feel that the concept of a single, integrated education programme for all Canadian children is the only real way to eradicate prejudice, suspicion, racial tension and social and economic inequality between Indians and non-Indians for the future.

Secondly, since the school populations, especially at the secondary levels, reflected these off-reserve education increases, Indian people in particular began to wonder whether the minister was wanting to renege on the "educational rights" promised in the treaties, and to have his entire responsibility discharged by the provincial and territorial governments.

Thirdly, arising out of these first two developments, a substantial number of Indian people have given a determined expression of opinion over the last five years that there should be a reordering of these priorities by the minister - an expression of opinion to which, as will be seen in the chapter on delegated legislation, the minister has recently paid significant and dramatic heed.

New Provincial Legislation Concerning Indian Education

However, none of these developments could have taken place if the Federal government alone was provided with the opportunity to take advantage of provincial educational services. There had to be similar enabling legislation passed by the provinces before such a confluence of educational streams could occur. And, in point of fact, some legislation of this nature had been passed before the 1951 Indian Act enabled the federal minister to make his overtures to the provinces.

In 1949, the British Columbia Legislature had authorized the Minister of Education, or local School Boards, "... to enter into an agreement with the Department of Mines and Resources - Indian Affairs Branch" for the education of Indian children in the public schools of the province.[45] As a result, Indian children have been in attendance in the public schools of British Columbia in increasing numbers since the early 1950's. On November 12, 1963, British Columbia became the first province to enter into a general provincial agreement with the Federal government in order to provide these services to Indian children.

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[45] British Columbia, R.S.B.C. (1949), c. 57, s. 13 (M).

In Manitoba, Boards of Trustees were given the authorization in 1954 which permitted them to enter into tuition agreements with "a Department or agency of the Government of Canada."[46] They soon had substantial numbers of Indian children attending their provincial schools and eventually a province-wide agreement with the Federal government covering the general education of such youngsters was signed effective January 1, 1965, under the provisions of the Education Department Act.[47]

Alberta passed legislation in 1956, but made it retroactive to July 1, 1952, which stated:

> "The Board of a non-divisional district or division may, with the approval of the Minister of Education, enter into an agreement with the Government of Canada to educate Indian children in a school or schools of the district or division."[48]

No overall provincial agreement has been signed between the Governments of Alberta and Canada, with the result that educational services to the Indian children of that province are provided under a large number of various agreements with individual school boards.

The Department of Education Act of Ontario[49] enabled the Minister of Education to make agreements with the Federal government, or to approve those made by School Boards, for the education of Indian children. Later amendments gave him the authority to establish the formulae for the calculation of the tuition fees that would be collected from the Federal government for the provision of these services.[50] Ontario, like Alberta, has no province-wide agreement with the Federal government.

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[46] Manitoba, R.S.M. (1954), c. 215, s. 135 (1) (n) (iii).

[47] Manitoba, R.S.M. (1954), c. 47, s. 6 (1) (bb).

[48] Alberta, R.S.A. (1955), c. 297, s. 178 (6).

[49] Ontario, R.S.O. (1960), c. 94, s. 13 (2).

Saskatchewan has no general agreement with the Federal government, but it has had numerous local agreements in force since the mid-1950's. It is section 3 (1)j of the School Act of Saskatchewan[51] which authorizes School Boards, with the approval of the Minister of Education, to enter into such agreements with the Government of Canada in order to provide for the education of Indian children.

In 1966, the revised Schools Act of New Brunswick enabled that province to "... enter into an agreement with the Government of Canada respecting the operation or ownership of school property by Canada."[52] This provincial agreement superseded a few local arrangements that had existed between the Federal government and some local Boards for a number of years prior to the passing of that legislation.

Indian children in both the Yukon[53] and Northwest Territories[54] take full advantage of the services provided by the respective Territorial

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[50] Ontario, R.S.O. (1970), c. 111, s. 13 (2).

[51] Saskatchewan, R.S.S. (1965), c. 184, s. 3 (1) (j)

[52] New Brunswick, R.S.N.B. (1966), c. 16, s. 8,

[53] Yukon Territory, (1957), c. 8 and (1958), c. 11.

[54] Northwest Territories, R.O.N.W.T. (1956), c. 48.

Governments, while in the remaining provinces, with the exception of Newfoundland, appropriate local agreements exist with numerous School Boards to provide education for Indian children in provincial classrooms.

Newfoundland is a special case. For since its entry into Confederation as a province in 1948, the Newfoundland government has seen no necessity to contemplate any such general or local agreements with the Federal government. Newfoundland has no Indians.

Indians on Provincial School Boards

While the entry of Indian children into provincial schools has been achieved relatively easily, legislation enabling their parents to sit on provincial school boards has experienced a slower genesis. Only British Columbia, Saskatchewan, Manitoba, Ontario and New Brunswick have so far passed enabling legislation of that particular type, and its effectiveness seems to be reminiscent of the provincial scenes before Confederation.

The specifics of this legislation, and what has been achieved through it in respect of the involvement of the Indian community in provincial public school education, will be discussed in detail in later chapters of this study.

CHAPTER VI

SUBORDINATE LEGISLATION AND THE DEVELOPMENT OF INDIAN EDUCATION

It has already been noted that subordinate or delegated legislation arises out of the physical inability of parliamentarians to be concerned with every detail, every contingency affecting the major legislative provisions of each law that they enact. Thus, each measure has built into it descriptions of just what type of delegation may take place. From these descriptions, it is possible to determine, if not the form that the subsequent subordinate legislation will take, at least the avenues along which it will travel.

In the case of the educational provisions of the various Indian Acts, three main sources of delegation have been identified. They are (1) the Governor in Council; (2) the Superintendent General or the Minister; and (3) the Chiefs and/or Band Councils of the Indian Bands.

Over the course of the years, each of these areas of delegated authority has been extensively used. The volume of Orders in Council, of orders, directives, regulations and policy statements issued by the Superintendent General or the Minister, or under their authorization, and of rules, regulations and Band Council Resolutions formulated by the many Indian Bands across the country is immense.

Under the circumstances, no comprehensive attempt will be made to cover such a vast body of subordinate legislation in this study. Rather, the emphasis will be upon (a) identifying examples of some of the inputs in the area of subordinate legislation affecting Indian education and (b) noting the effects of recent developments in this same area.

Orders in Council

When the Governor in Council is given the legislative authority to develop his share of any resultant subordinate legislation, he does so by the issuance of Orders in Council (the Council in question being the Privy Council). These Orders in Council do not mean that the Governor General initiates subordinate legislation; they indicate that the personal representative of the Crown endorses such subordinate legislation submitted to him by the Minister. The Minister in turn has these Orders framed by, or upon the advise of, his senior civil servants. The Orders themselves enable the further development of that legislation, approved by Parliament, which has already received the Royal Assent.

In the case of Indian education, the Governor-General has the direct authorization to issue Orders in Council in respect of section 114 (1) of the Indian Act (R.S., c. 149), concerning agreements with provincial and territorial governments, public and separate school boards, and religious or charitable organizations. He may also directly rule against the establishment of separate schools on Indian reserves, under section 122, if the number of children involved is too small. Indirectly, he may issue Orders in Council that affect the provision of educational services under section 69 (Band management of funds).

Controls upon Orders in Council

Section 69 has an added significance in this matter, in that the wording of the section gives a clue to an additional dimension, and an especially important one, which affects the issuance of Orders in Council. It indicates that all such Orders must be made within the context not only of this Act, but of the Financial Administration Act (R.S. (1970), c. 116) as well.

It has often been said that in England the most important member of the Cabinet, after the Prime Minister, is the Chancellor of the Exchequer, for it is his "Ministry" which controls the purse-strings and has the final word on the financial operation of all other Ministries and Agencies of the Crown. In Canada, that role is fulfilled by the Minister responsible for the Treasury Board, known as its President.

The Treasury Board, as laid out in the terms of the Financial Administration Act, consists of the President of the Treasury Board and "any four members of the Queen's Privy Council for Canada, who may be nominated from time to time by the Governor in Council"[1] or their alternates (other Privy Counsellors) who must also be nominated by the Governor in Council.

It functions, then, as a select council of the Privy Council, and one of its primary tasks is to see that all approved Orders in Council fit within legislative guidelines of the Financial Administration Act as well as those of the specific Act under which they are submitted.

Orders in Councils and Treasury Board Minutes

This explains why a recommendation concerning the issuance of an Order in Council invariably goes first to the Treasury Board for clearance and, if approved, appears in the form of a Treasury Board Minute. This Minute itself, already approved by the Governor-General in Council, then makes the ultimate recommendation that an Order in Council be issued.

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[1] Canada, R.S. (1970), c. 116, s. 3 (2).

The following example of a Treasury Board Minute indicates how (a) the authority under the appropriate Act is properly confirmed, (b) the financial circumstances surrounding that authority are added as specific controls upon it, and (c) conditions are created for approving such agreements that were not present in the original legislation.

P. C. 1963-5/382

Certified to be a true copy of a Minute of a Meeting of the
Treasury Board, approved by His Excellency the Governor
General in Council, on the 9th March 1963.

T.B. 601776

CITIZENSHIP AND
IMMIGRATION

The Board recommends that -

1. pursuant to subsection (1) of Section 113 of the Indian Act, authority be granted to enter into agreements on behalf of Her Majesty for the tuition in accordance with the Indian Act of Indian children with

   (a) the government of a province,

   (b) the Commissioner of the Northwest Territories,

   (c) the Commissioner of the Yukon Territory,

   (d) a public or separate school board,

   (e) a religious or charitable organization,

   provided that:

   (1) in those cases that involve federal capital contributions in respect of educational facilities, the ratio of the total capital contribution to the total cost of the educational facilities does not exceed the ratio of Indian pupils to attend the facilities to the total number of pupils to attend the facilities;

(2) per capita tuition fees for the particular level of education (i.e. elementary or secondary) do not exceed the maximum per capita operating cost incurred by school authorities under agreements for that particular level of education which have already been entered into;

(3) there are no special or unusual circumstances about which the Treasury Board should be informed.

2. the following Orders in Council be cancelled:[2]

P.C. 1958-8/1578 of November 20, 1958
P.C. 1961-3/1662 of January 5, 1961
P.C. 1961-3/366 of March 16, 1961
P.C. 1961-3/1334 of September 21, 1961

Since this Treasury Board Minute was issued in respect of the Minister of Citizenship and Immigration, within whose Department the Indian Affairs Branch was at that time located, a later Minute was required to transfer the authority herein bestowed from the Minister of Citizenship and Immigration to the Minister of Indian Affairs and Northern Development when that Department was given the responsibility for the administration of the Indian Act.

Matters Covered by Orders in Council

These explanations concerning the ramifications of Orders in Council help also to explain why such Orders over the years have covered such a wide variety of subjects, from matters of major import to the system of Indian education to items that can only be labeled

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[2] The Department of Indian Affairs concluded an agreement between Canada and the Northern School Board of Saskatchewan on August 15, 1968, quoting the authority of the Order in Council P.C. 1958-8/1578 despite this admonition. This would seem to cast some doubt upon the validity of that Agreement so long as it stands uncorrected.

"administrivia."[3]

One excellent example of an Order in Council being a potent instrument of subordinate legislation occurred in 1894. An Act to amend the Indian Act (1880) was ascented to on July 23, and under sections 137 and 138, the Governor in Council was given the authority to make regulations "to secure the compulsory attendance of children at school... provide for arrest and conveyance to school... the punishment... of parents and guardians... the committal by justices or Indian agents of children of Indian blood under the age of sixteen years to... industrial school or boarding school."[4]

Order in Council of November 18, 1894

On November 18, 1894 the appropriate Order in Council was passed authorizing these newly-framed regulations. They included reasons for excusable absences (not incorporated officially into primary legislation until much later) and named the schools to which Indian children could be committed. These regulations also delegated the authority to Indian agents to appoint truant officers who were then "to be vested with police powers."

Indian agents and justices of the peace were admonished not to commit Indian children to an industrial or boarding school without giving four days oral or written notice to the parent or guardian of the child. If an objection to the committal was lodged, then a formal inquiry had to be held to determine whether or not the child should be committed - "except in the province of Manitoba and the Northwest Territories, where an Indian child may be committed by an Indian agent or justice of the peace, as aforesaid, without notice."[5]

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[3] By Order in Council P.C. 1966-14/2373, December 15, 1966, His Excellency the Governor-General in Council was "pleased to authorize the payment... of $20 to... former teacher at the Red Sucker Lake School, for the purchase of gas required to transport him by boat from his place of residence to the school during the period of breakup in May and June, 1966."

[4] Canada, 57-58 Victoria, c. 32, ss. 137 and 138.

Once committed to such a school, the child could only leave with the permission of the Superintendent General, the Assistant Indian Commissioner, or the Principal of the school. If a child did abscond, or fail to return from leave, any Indian agent or justice of the peace could issue a warrant for the child's apprehension. But -

> "... notwithstanding anything in this section, it shall be competent for any employee of the Indian Department, or any constable, to arrest without a warrant any child found in the act of escaping from any industrial or boarding school, and to convey such child to the school from which it escaped."[6] (underlining added)

Moreover, where a warrant had been issued, it conferred the authority to "enter (if need be by force) any house, building or other place specified in the warrant and... remove the child therefrom."[7]

This Order in Council certainly created specific legal authority out of the general provisions of the Act of 1894.

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[5] Public Archives of Canada, R.G. 10 (Red), Vol. 2552, No. 112220.

[6] Ibid.

[7] Ibid.

Orders in Council of December 22, 1970

Of more recent significance, but in an entirely different direction, is the Order in Council, P.C. 1970-2/2177, issued on December 22, 1970. This Order enabled the Blue Quills Native Education Council to take over the operation of the Blue Quills Student Residence, St. Paul, Alberta, as of January 1, 1971.

At the commencement of this study, it was stated that the confrontation at Blue Quills between Indian parents of the area and senior members of the Department of Indian Affairs led to a new application of a section of the Indian Act. The incident, arising out of proposed revised utilization of the Student Residence, was centered around the Indian's peoples demands that they be allowed to operate the residence, and the attached classrooms, themselves.

They pointed out that, for many years, the Residential School (re-designated as a Residence and Day School in 1969) had been operated by the Roman Catholic Oblate Fathers under agreement with the Federal government. They also pointed out that although a few native people had been employed in some of the more menial jobs at the Residential School, by and large they had been effectively excluded from any involvement in or with the school by the former management. Nevertheless, they felt that recent Student Residence Staff Training Programmes initiated by the Department could provide the school with an effective staff of native people, if the native people were given control over the structure and its operation.

Initially, it appeared that there was no way in which such a transfer could be made to the Indian people. The Residence, although situated on Crown land, was not included in, or even adjacent to, an

Indian Reserve. Thus, it could not be taken over by an Indian Band, even if such a move could be sanctioned under sections of the *Indian Act* relating to Band Council operations.

Then it was that the Indian people asked the question - "Under what authority did the Oblate Fathers operate the Residence previously?" The answer, of course, was that they did so under section 114 (a) (e) which made it possible for the Minister to enter into an agreement with "a religious or charitable organization."

This answer provided the key to the Indians solution of the problem - they would incorporate themselves as a "charitable organization" under Part III of the *Canada Corporation Act* (1964-65, c. 52).

Thus, an entirely new dimension was added to the interpretation and application of that subsection of the *Act*. Whatever may have been the intention when the *Act* was devised in 1951, it seems fairly safe to say that such a "charitable organization" as the Blue Quills Native Education Council was not included.

The wording of the Order of Council of December 22, 1970:

> "WHEREAS the Blue Quills Native Education Council has indicated the desire to operate the Blue Quills Student Residence, Blue Quills, Alberta;
> AND WHEREAS the Department of Indian Affairs and Northern Development has encouraged Indian groups to take a greater degree of responsibility over their own affairs;
> AND WHEREAS the Blue Quills Native Education Council has satisfied the Department that it is able to carry out the administration of this Student Residence.
> THEREFORE, HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL, on the recommendation of the Minister of Indian Affairs and Northern Development and the Treasury Board, pursuant to the Indian Act, is pleased hereby to authorize the Blue Quills Native Education Council to assume responsibility for the

> operation and maintenance of the Blue Quills Student Residence effective January 1, 1970"[8]

is indicative that this authority to enter into an agreement with the Blue Quills Native Education Council, "a body corporate and politic, duly incorporated under the laws of Canada," is a piece of subordinate legislation of considerable magnitude.

Ministerial Delegation

In the earlier years of the operation of the Department of Indian Affairs, the Superintendent General of Indian Affairs was named in legislation as being given the authority to initiate or approve certain types of subordinate legislation. More recently, the person so designated has been the Minister of the appropriate Department.[9] (The Minister retains the traditional title of Superintendent General of Indian Affairs, but it is used only in a ceremonial, not an administrative, sense.)

In the past, too, the Superintendent General exercised his authority through the framing of regulations, which were then issued directly as orders to be executed by his headquarters or field staff. Recent years have witnessed some changes in this procedure. Subordinate legislation arising out of the authority given to the Minister appears in the main forms of (a) policy directives, (b) regulations, and (c) Treasury Board Minutes.

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[8] Canada, Order in Council P.C. 1970-2/2177.

[9] The Department responsible for the administration of Indian Affairs has been redesignated on a number of occasions. A composite list of these changes is given in Appendix A.

Treasury Board Minutes, as indicated in the discussion on Orders in Council, confirm that the provisions of the Financial Administration Act have been met as well as the provisions of the specific Act under which the subordinate legislation is framed. Since virtually all subordinate legislation involves either new or increased expenditure of funds, or changes or refinements in policy that impinge upon such expenditures, the Treasury Board Minute has come to be an ominpresent and ubiquitous instrument in the development of subordinate legislation.

Ministerial Authority and the Indian Act

Under the provisions of the present Indian Act, the Minister, inasfar as Indian education is concerned, may (1) enter into agreements with other governments or agencies to provide education for Indian children; (2) establish, operate and maintain schools for Indian children; (3) make regulations concerning school buildings and equipment, teaching staffs, inspection of and discipline in schools and, generally, the education of Indian children; (4) provide transportation for Indian children to and from school; (5) rule on moneys of children in Residential Schools to be spent for their maintenance; (6) require children under seven and over sixteen to attend school; (7) excuse from attendance children under "efficient instruction" at home; (8) designate, within limits, the school to be attended; (9) appoint truant officers; and (1) approve and regulate the establishment of separate schools on Indian Reserves.

Previously, it was pointed out that the Governor in Council does not initiate or himself create subordinate legislation, but rather authorizes that which is submitted to him with "advice" by the Minister concerned. (Refusal or reluctance to take that advice is rare, but it has happened in Canadian history.) Similarly, the Minister, in attempting to act in all the areas outlined above, relies upon the advice and the creativity of his senior civil servants, who themselves are "advised" by their headquarters and field staffs in respect of what type of, and when, such subordinate legislation is required.

Ministerial Authority and Treasury Board Minutes

One aspect of the Minister's relationship to Indian education under the Act is of interest; all his delegated authority is discretionary. He "may" make regulations, or carry out other actions, as outlined above, but he not compelled or required to do so.

On the other hand, his evident willingness to exercise this discretionary authority would seem to confirm the inherent intent of the major legislation. This was that (a) there would be a recurring necessity for him to develop such subordinate legislation and (b) there would be areas of developing service not envisaged at the time of the passage of the Act with which he, and not necessarily Parliament, could adequately deal.

Thus it is that the Minister exercises his authority by devising the necessary amendments, changes and further extensions of the original provisions of the legislation, recommends them for approval to the Treasury Board and, having secured that approval, circulates the result under both his own and the Treasury Board's authority.

Treasury Board Minutes during recent years have proclaimed resulting subordinate legislation in such areas as (a) the provision of scholarships for Indian students (T. B. 503338; June 29, 1956);

(b) the establishment of funds to be administered by School Committees (T. B. 506077; September 27, 1956); (c) the provision of training allowances for adult Indians (T. B. 601776; March 1, 1963); (d) the creation of bursaries to assist intending teachers of Indian children in the Intercultural Education Programme at the University of Alberta (T. B. 646940; October 7, 1965); (e) the authorization of a ten percent preference to Indians bidding on school bus contracts awarded by the Department (T. B. 876861; June 2, 1968); (f) the initiation of a five-year programme to better prepare Child Care Workers to operate in student residences (T. B. 683443; September 19, 1968); and (g) the contracting with the Indian Association of Alberta for proposals concerning a multi-million dollar Indian Education Centre (T. B. 698315; November 6, 1970).

Three Key Treasury Board Minutes

There are three Treasury Board Minutes of recent vintage that are of key importance in the area of subordinate legislation affecting Indian education. When taken in total, they authorize the virtual complete operation of education services for Indian children and adults by Band Councils or School Committees.

If they so desire, the Indian people can now be totally responsible for their own education programme.

Authorization for Kindergarten Programmes

The first major step in this direction concerned a kindergarten programme for Indian youngsters. It will be remembered that although the Minister may require a six year old Indian child to attend school, he has no authority over children younger than six years of age. Nevertheless, he has the general authority to "provide for... education"[11] and it was under this clause that "policy was formulated on the instruction of Treasury Board" (T. B. 527861; March 6, 1958) in respect of a kindergarten programme for five year old Indian youngsters.

The programme, which involved sixty-three children utilizing reserve classroom accommodation freed by the attendance of older children in provincial schools,[12] has grown until presently it caters to 8,215 kindergarten students in three, four and five year old programmes, involves a substantial number of Indian people trained as teacher-aides, centres around a programme of pre-school readiness, including an extensive "language-experience" programme in the children's native languages, and takes place, in some cases, in specially-designed and newly-built kindergarten school units.

It is this programme that the Minister may now "enter into service contracts with School Committees and Band Councils" in order to operate (T. B. 708442; November 25, 1971).

Authorization for Post-School Programmes

Similar developments have taken place in the post-school area. Starting from the basis of encouraging and assisting Indian students to take advantage of post-secondary programmes in the years immediately following World War II, and of assisting returning Indian veterans in re-training and rehabilitation programmes, the Post-School Programme now covers the areas of (a) Adult Education, (b) Vocational and Professional Training and (c) Employment and Relocation.

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[11] Ibid., s. 115 (a).

[12] At Walpole Island, this accommodation consisted of an old disused Agency Office which was converted into a kindergarten classroom.

Again, since these programmes cater almost exclusively for Indian people over the age of eighteen, there is no specific authority in the Act for their authorization or operation. But there is the clause, already quoted, that enables the Minister to "provide for... education" and it is under this umbrella that such programmes can be accommodated.

The components of the programme cover a wide range of activities. Adult Education, for instance, provides for both basic literacy and general interest, skill or leisure-time courses to be offered on the reserves. It also covers up-grading and other pre-employment programmes, both on and off the reserve, offered in conjunction with Manpower Training Programmes.[13]

The vocational and professional programme similarly covers a wide range, utilizing all manner of university, college and private institutional courses, as well as other avenues of professional training such as articling, etc.

The Employment and Relocation Programme is the most comprehensive, covering such activities as urban resettlement, mortgage and furniture assistance, orientation visits and ongoing family counseling, as well as the normal training for, seeking out of, and retaining of off-reserve employment situations.

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[13] Since such programs are provided jointly by the Federal Manpower Department and provincial authorities, utilizing provincial facilities, the degree of acceptance of Indian trainees into the program has differed between provinces.

The current annual cost of the programme is in excess of $13.5 million. The Minister now has the authority (T. B. 710314; March 22, 1972) to transfer this money "to Indian Band Councils to enable them to provide post-school educational services to Indian adult residents of Canada."

Authorization for In-School Programmes

The provision of regular educational programmes, referred to as the in-school programme, has been the core of Indian education since its earliest days.

The opportunity for involvement of Band Councils in this programme is not a new phenomenon, as has been shown in previous chapters. The School Board of the Six Nations Reserve in Ontario had the longest and most active of careers. As early as February 26, 1892, it was recording its seventy-eighth meeting, and by December 21, 1922 was into its 227th (at which time it passed a motion instructing the teachers in the reserve schools "not to supply textbooks to whites and non-treaty Indians as they do not contribute anything to the purchase of the books"[14]). Their "Regulations for the Management of the Six Nations Indian Schools" had been approved His Excellency the Governor-General in Council on March 14, 1906, and from December 1910 until 1927, the Board carried on a continuous struggle to have him approve their amendments to them.

Other Indian School Boards may not have had as long and colorful a career as that of the Six Nations Reserve, but they were active from time to time. In 1880, the Chippewas of the Saugeen and the Chippewas of the

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[14] Public Archives of Canada, R.G. 10 (Red), Vol. 2011, No. 7825-4A.

Thames both had School Boards, while in 1891, regulations for the operation of their schools were being framed by Indian School Trustees at Cape Croker in Ontario, and at Duck Lake, Saddle Lake, White Fish Lake, and for Sampson's Reserve at Peace Hills (later Hobbema) in Western Canada.

School Committees entered a new phase of life and activity with the authority granted by the previously-mentioned Treasury Board Minute, 506077, September 27, 1956, and have become increasingly effective since then. At the same time, however, their role in the day to day operation of reserve schools has always been a minor one, and they have never enjoyed the full or equivalent status of their white neighbors in these matters.

But that can now change. Following the recommendations of the Watson Report[15] and in conjunction with the presentation by the National Indian Brotherhood of its policy paper "Indian Control of Indian Education" in December, 1972, Treasury Board Minute 715958, November 23, 1972, enabled the Minister to extend his authority to Band Councils "to manage in-school education programmes."

As was spelled out in the request to the Treasury Board, this involves Indian administration of tuition payments to provincial School Boards, the employment of teachers, the management of educational assistance programmes, the handling of education allowances to students, the provision of seasonal transportation programmes (in addition to the daily transportation programme, the authority for which they acquired under Treasury Board Minute 678269, April 16, 1968), the operation of student residences, and the responsibility for social counselling services.

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[15] Canada, Fifth Report of the Standing Committee of the House of Commons on Indian Affairs and Northern Development, June 30, 1971 (Ottawa: Queen's Printer, 1971), p. 766.

These three pieces of subordinate legislation, authorizing Indian control of kindergarten, in-school and post-school programmes, illustrate the importance of this aspect of the legal context within which educational services are provided to Indian and their children.

Other Forms of Ministerial Delegation

The areas in which the Minister has the authority to make regulations in respect of Indian education, as has already been noted, are considerable. It has also been noted that this requires him to receive constant and wide-ranging advice from his senior or other Departmental officials. This requirement, together with the need to administer the growing educational programme over the years, has led to the establishment of an Education Division of the Department of Indian Affairs.

Education Division of the Department of Indian Affairs

Indian education has only in recent years been administered by a professional Education Division staff. Although a Superintendent of Indian Education was first appointed in 1909, his job was one of general supervision and coordination of reports concerning Indian schools, and apart from clerical help, he operated without benefit of other staffing assistants. As one writer has put it, "... prior to the end of World War II, the Agency Superintendent, then known as the Indian Agent, together with the local missionary, the R.C.M.P., and the local trader, could handle the administration of what was a very rudimentary education programme."[16]

By 1951, the Superintendent of Education, located in Ottawa, had a core staff of six Regional School Inspectors, who were located in Vancouver, Calgary, Regina, Winnipeg, Toronto, and Quebec City. The key figure at the local level, however, continued to be the Agency Superintendent, and he it was who was responsible for the actual administration and control of the programme.

With the rapid growth in both size and professional complexity of the programme during the 1950's, the position of Supervising Principal was created. The Supervising Principal was the first professionally qualified educational field administrator to operate out of the local Agency Office, but his immediate supervision was still provided by the Agency Superintendent. It was not until the mid 1960's that the position of District School Superintendent came into being, and the Regional School Superintendent was able to rely upon substantial numbers of fellow professionals in the administration of the programme.

While these developments had been taking place, the Education Division in Ottawa had slowly been taking shape as an organizational unit responsible for both the administration of the rapidly expanding programme of Indian education and for the professional development of educational field staff, teachers and school programmes. This expansion in services and personnel required the restructuring of channels whereby communication could be facilitated, policies developed, and the aims of the Department and the legislative provisions of the Indian Act carried out.

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[16] H. B. Rodine, "The Administrative Structure of Indian Education, 1965," The Education of Indian Children in Canada (Toronto: The Ryerson Press, 1965), p. 24.

Education Division Letters

Whiles rules and regulations concerning the provision of education services continued to be issued under the general authority of the Minister, administrative divisions continued to be made and implemented by both the headquarters and field educational staff. To insure that the programme remained cohesive, a system of Education Division Letters was inaugurated which, although intended to be informational in nature, on many occasions assumed dimensions that took them into the realm of being subordinate legislation.

This type of development can hardly be considered surprising. In the course of any sort of programme development, decisions have to be made. While being made within the acknowledged framework of the purpose of the organization (in this case, the administration of the Indian Act), the necessity to deal with new, unconsidered contingencies leads to the creation of precedence. That precedent can be accepted or condoned or it can be revoked and held to be invalid. In either case, it leads to a refinement of the original framework within which operations are carried on. For if it becomes an accepted precedent, then the original framework is extended; if it is rejected, then that framework is redefined in order to exclude the possibility of a similar decision in the future.

Earlier Example of Policy Formulation

A good example of how this type of precedent making decision, resulting in policy formulation, comes about is shown in Departmental correspondence concerning the activities of the six Nations School Board in 1928.

In January of that year, Hilton Hill, a staff employee in the Indian Agency Office in Branford, Ontario, and a member of the Six Nations Reserve, was elected to the School Board. This election was noted by E. C. Parker, Agency Inspector of the area, in a memorandum to Duncan C. Scott, the Deputy Superintendent General of Indian Affairs, dated February 1, 1928;

> "I beg to submit that the Department should declare it a matter of policy that employees in Indian Offices should not hold executive positions on Band Councils or School Boards... I think I have good grounds for such a stand and that it should apply generally, excepting, of course, to the ex-officio duties of an Indian Agent.
> While at Brantford last fall, I had a personal talk with Hill and this matter of friction between himself and Superintendent Morgan came up. After listening to his side of the story and without informing him that I was already acquainted with it, I strongly advised him not to seek re-election to the School Board. It is evident that he considers his judgement in matters of this kind superior to mine and has acted on his own responsibility."[17]

While no direct reply to Mr. Parker is recorded, a letter was sent to Lt. Col. C. E. Morgan, the Indian Superintendent at Branford, by A. F. MacKenzie, Acting Assistant Deputy and Secretary of the Department of Indian Affairs, on February 4, 1928:

> "The appointment of school trustees is approved, except in the case of Mr. Hilton M. Hill... the Department's wish is that employees of Indian offices should not hold positions on Indian councils or School Boards. It is true that, in the past, certain exceptions to this rule have been allowed; but it is considered advisable to conform to the general practice in future."[18]

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[17] Public Archives of Canada, R.G. 10 (Red), Vol. 2011, No. 7825-4A.

[18] Ibid.

The outcome of this correspondence is reflected in the minutes of the Six Nations General Council Meeting of March 1, 1928:

> "Moved by Wm. Smith seconded by John Lickers that George Garlow be appointed Trustee for Nos. 2, 4 and 10 schools to fill the vacancy caused by the resignation of Hilton M. Hill."[19]

Educational Division Letter and Policy Formation

Does that type of policy formation continue in the present administration of Indian education? Perhaps not on the same basis of obvious personal reaction, but certainly on the basis of reaction to emerging situations.

The use of Education Division Letters began on August 22, 1966, and they were intended to be "memoranda of a policy or directive nature." They covered such topics as Educational Assistance, Curriculum Guidelines for Federal Schools, Mother Aide Training Programmes, Instruction in Indian Languages, and Transfer of Indian Education Services to Provincial School Boards. While inviting reactions to existing policies, they also were instrumental in initiating new ones.

Education Division Letter No. 37 (July 8, 1968), for example, stated:

> "The purpose of this letter is to indicate the order in which various services within the education programme might progressively be handed over to a properly constituted school committee for administration... It is suggested that delegation of authority might follow this order:
>
> 1. the school lunch programme,
> 2. daily school transportation,

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[19] Ibid.

> 3. repairs and maintenance of school buildings,
> 4. the appointment of caretakers,
> 5. janitor supplies for schools.
>
> ... The Branch is not prepared at this time to involve the Band Council in the payment of tuition fees for children attending provincial schools."

In another context, Education Division Letter No. 39 (July 29, 1968) stated:

> "The immediate task of each school superintendent is to insure that all books containing discriminatory, biased and prejudiced statements about the Indian people be removed from all schools immediately. If such action involves basic textbooks or readers, the Department of Education should be advised of the problem and requested to suggest acceptable replacements so that there will be no interruption in the education of the Indian child."

One of the most pertinent of the letters was issued on March 27, 1969. No. 51 of the series, this Education Division Letter bore the title "Indian Act, Section 119." It stated:

> "Although the provisions of this Section may have had relevance twenty years ago, today, under vastly changed circumstances and a system of education not envisaged when this Section was worded, they are outmoded, irrelevant and harmful.
> Please be advised that forthwith this Section will be disregarded in dealing with Indian pupils with behavioural problems. Such pupils whose behaviour demands disciplinary action involving expulsion or suspension will not be regarded as juvenile deliquents."

It is interesting to evaluate this piece of subordinate legislation in relationship to the earlier statement that was included in this study under the heading "Definitions." In respect of Statute Law, it was noted that "a bill which has been properly passed by both Houses of Parliament and which has received the Royal Assent will be a source of good law, however ill-conceived... it may be... As long as an Act of Parliament has not been repealed, it remains good law."[20]

While one may understand and sympathise with the point of view expressed in the Education Division Letter, there would appear to be no legal basis for the issuance of such a "memorandum of policy" which attempts to set aside the administration of "good law." Frank has been quoted earlier on this topic - "... it is impossible to amend or repeal an Act of Parliament by the exercise of delegated legislation unless the Act of Parliament itself permits it."[21]

The Indian Act makes no such provisions.

Other Policy Guidelines

In addition to the Education Division Letters, policy statements and guidelines of a more comprehensive nature continue to be developed and issued from time to time.

Of particular interest is the statement originally issued in April 1970, and since revised (October, 1970 and July, 1971). It covers the Education Assistance and Boarding Home Programmes.

In the area of Education Assistance, it specifies the nature of the assistance which can be extended, and categorises the recipients of that assistance into various groupings in relationship to type of programme and place of residence.

Under section 4 of the Guidelines, it outlines the type of of educational assistance that is available to "off-reserve Families."

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[20] W. F. Frank, The General Principles of English Law (London: George G. Harrap and Co. Ltd., 1969), p. 25.

[21] Ibid., p. 28.

With regard to the in-school programme, the policy states:

> "When a family has established permanent residence off the reserve, the municipal and provincial school services of the community will be available to the children and additional educational assistance from this Department may not be required. Where there is a need, however, and on application from the parents or guardian, educational assistance may be provided for books and school supplies and for an education allowance."[22] (underlining added)

The education allowance mentioned is $10.00 per month for students in grades 9-13 or who are aged between fourteen and seventeen years, and $20.00 per month for students eighteen years and over enrolled in grades up to and including grade 13.

Regarding the post-school programme, it goes on to say:

> "If financial assistance is requested to pursue educational programmes at the post-secondary, vocational or university level, Educational Assistance granted to Indians living on a reserve may be extended to off-reserve Indian students, provided they are able to establish financial need and provided they are normally considered a resident of Canada at the time of application."[23]

While it is true that the extension of this assistance is discretionary and, in fact, may not be needed as a result of provisions by other authorities, nevertheless this policy is in direct contravention of section 4 (3) of the Indian Act which states:

> "Sections 114 to 123 (those covering education)... do not apply to or in respect of any Indian who does not ordinarily

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[22] Department of Indian Affairs, "Educational Assistance Policy with Guidelines for Operating the Boarding Home Program for Indian Students," (mimeographed), p. 3.

[23] Ibid., p. 3.

> reside on a reserve or on lands belonging to Her Majesty in right of Canada or a province."[24] (underlining added)

Again the motivation behind the policy is not in question. But within the legal context of the provision of Indian educational services, the same consideration must be given to these statements, as pieces of subordinate legislation, as must be given to Education Division Letter No. 51.

Subordinate legislation, whether it be created in terms of an Order in Council, or by Ministerial Order, or by regulations, policy statements, or operating procedures issued by the Minister or others to whom he has further delegated his authority, can only be valid if it does not effectively amend or repeal the legislation under which it is issued.

It is when established or newer policies and procedures appear to be in contravention of the provisions of either the Indian Act or especially the Treaties that Indian leaders, such as Harold Cardinal, accuse Departmental officials of "speaking with a forked tongue."

Subordinate Legislation by Band Councils

Under the terms of previous Indian Acts, certain areas of regulation making; including educational matters, have been assigned to Chiefs and Band Councils. It was pointed out that this is not the case with the present Act, although the same effect (and more, as has been illustrated) has been achieved indirectly.

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[24] Canada, R.S., c. 149, s. 4 (3).

Since this type of subordinate legislation making, therefore, tends to be more historical in nature, it will be referred to in the next chapter.

Amplification of those aspects of the making of subordinate legislation by Band Councils which are most recent will be examined in Chapter VIII.

CHAPTER VII

ATTITUDES AND JUDGMENTS AS FACTORS AFFECTING THE DEVELOPMENT OF INDIAN EDUCATION

In the study so far, the development of Indian education in Canada and of the legislation which is its base, together with some resultant subordinate legislation, have been reviewed.

The above developments have taken place within the milieu of Canada as an emerging nation. They reflect the difficulties of a country's aboriginal inhabitants faced with the super-imposition of the cultural values of a vaster immigrant majority. They epitomize, too, the problems faced by a settler population attempting to open up a new continent for their own advantage; trying, on the one hand, to do so in a manner that both legalizes their possession of the land and insures for them the friendship of its former owners while, on the other, providing opportunities for those dispossessed, unsophisticated "brethren" to acquire that level of civilization which will enable them also to enjoy the fruits of a blossoming nationhood.

In a situation such as this, what sort of pressures were at work? As these policies and programmes were developed, what were the attitudes and motivations of those involved in their development? Since a number of varying interest groups were involved in the attempts to deal with these particular matters, the viewpoints of these groups would themselves have varied. These differences of opinion would have initially resulted in conflict and, eventually, in compromise, if any sort of comprehensive solution to the problems was to be found.

In this chapter, then, an attempt will be made to identify some of these attitudes, and to see how they were reflected and accommodated in both the educational and legislative development of Indian education.

The Aims of Indian Education - The Christian Viewpoint

It is self-evident that the European newcomers to the North American continent considered its inhabitants to be heathen savages. Among the justifications for the occupation of these "new" territories were the acquisition of territory for settlement, the commercial development of their resources, the securing of them militarily, and the Christianization of their peoples.

How were these ends to be achieved, particularly the latter? By bringing the "savages ...from falsehood to truth, from darkness to light, from the highway of death to the path of life, from superstitious idolatry to sincere Christianity, from the devil to Christ, from hell to heaven....Beside the knowledge how to till and dress their ground, they should be reduced from unseemly customs to honest manners, from disordered, riotous routs and companies to a well-governed commonwealth and with all shall be taught mechanical occupations, arts and liberal sciences," wrote Sir George Peckham from Virginia in 1583.[1]

This concise viewpoint of both the ends and means of Indian education was one that was to be echoed many times in the years ahead. The combination of being both Christianized and educated at the same time, with the accent upon both a mechanical and a liberal education, was to dominate much of the thinking about education for Indians over the next nearly 400 years.

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[1] J.A. Doyle, English Colonies in America, Vol. I (New York: Henry Holt and Co., 1882), p. 54.

The Roman Catholic missionaries at work in New France in the early seventeenth century, worked towards these ends, and when the Company of New France (the One Hundred Associates) was formed, its charter from Louis XIII included a statement that its aims were to be "the spread of Christianity, the civilization of the natives, and the establishment of of Royal Authority."[2] The Protestant Missionary Societies, in their efforts and undertakings in the Maritime provinces, in Upper Canada, and throughout the West, subscribed to similar basic principles. And as the military threat to the existence of the Canadian colonies began to diminish, and the need to cultivate the Indian as an "ally" subsided, government involvement in Indian education, also formulated along these same lines, began to be stressed.

The Government and Christian Education - Early Viewpoints

Having served as the provisional Lieutenant Governor of Upper Canada in 1815, Sir George Murray, as British Secretary of State in 1830, stressed that the Indian Department should be "gradually reclaiming (the Indians) from a state of barbarism and... introducing amongst them the industrious and peaceful habits of a civilized life."[3] Agreeing with him were Sir James Kempt (Administrator of Lower Canada, 1828-1830) and Major General Darling (Chief Superintendent of Indian Affairs, 1828-1830) who felt that the task of teaching Christianity and civilization to the Indians should be undertaken by the government, and that the Indian Department should be given the responsibility for the job. Kempt, in fact, issued procedures in 1829 that were designed for the Indian's "religious improvement, education and instruction in husbandry."[4]

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[2] J. H. Kennedy, Jesuit and Savage in New France (New Haven, Conn.: Yale University Press, 1950), p. 34.

[3] Public Archives of Canada, Records Group 10 (Red Series), Vol. 116, File 1830.

So it was that the Federal government, after it entered the picture, continued to formulate its educational policies for Indians along these same lines. In writing to the Joint Committee of the Methodist, Presbyterian, and Anglican Churches in 1908, Frank Pedley, the Deputy Superintendent General of Indian Affairs stressed that "... the prime purpose of Indian education is to assist in solving what may be called the Indian problem, to elevate the Indian from his condition of savagery, to make him a self-supporting member of the state, and eventually a citizen in good standing."[5]

In 1910, as part of the First Annual Report of the newly-appointed Superintendent of Indian Education, it was pointed out that "... the provision of education for the Indian... includes not only a scholastic education, but instruction in the means of gaining a livelihood from the soil or as a member of an industrial and mercantile community, and the substitution of Christian ideals of conduct and morals for aboriginal concepts of both."[6]

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[4] Robert J. Surtees, The Original People (Montreal: Holt, Rinehart and Winston of Canada, Ltd., 1971), p. 36.

[5] Public Archives of Canada, Records Group 10 (Red Series), Vol. 6001, File 1-1-1.

The Gift of Education - Some Indian Viewpoints

The Indian people, however, were early in developing some scepticism about these educational aims. Green[7] quotes from Franklin's Remarks Concerning the Savages of North America, 1784, a classic example of the rejection of the type of education that was proposed. In 1744, the Chiefs of the Six Nations Indians declined an offer of a "gift" of having six of their sons educated at Williamsburg:

> "We are convinced... that you mean to do us good by your proposal and thank you heartily. But you, who are wise, must know that different nations have different conceptions of things; and you will not therefore take it amiss if our ideas of this kind of education happened not to be the same with yours. We have had some experience of it; several of our young people were formerly brought up at the colleges of the northern provinces; they were instructed in all your sciences; but, when they came back to us, they were bad runners, ignorant of every means of living in the woods, unable to bear either cold or hunger, knew neither how to build a cabin, take a deer, nor kill an enemy, spoke our language imperfectly, were therefore neither fit for hunters, warriors nor counsellors; they were totally good for nothing."

They went on to say that if the "gentlemen of Virginia" would send them a dozen of their sons instead, they would care for them, give them the benefit of an Indian education, and "make men of them."

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[6] Canada, Annual Report of the Department of Indian Affairs, 1910 (Ottawa: King's Printer, 1910), p. 273.

[7] N. G. Green, Canada's Indians - Federal Policy, International and Constitutional Law (Edmonton, Alberta: Queen's Printer, 1970), pp. 32-3.

In a similar vein, but speaking sincerely and without sarcasm, Chief Mawedopenais voiced his hopes during the North-West Angle of the Lake of the Woods treaty-signing ceremony in October 1873, telling Lieutenant Governor Alexander Morris "... the time may come when I will ask you to lend me one of your daughters and one of your sons to live with us; and in return I will lend you one of my daughters and one of my sons for you to teach what is good, and after they have learned, to teach us."[8]

Morris was also able to report that the Chief of the Lac Seul Band "wished a school master to be sent to them to teach their children the knowledge of the white man"[9] and that the Indian Chiefs at the signings of Treaties 5 and 6 "displayed a strong desire for instruction in farming, and appealed for the aid of missionaries and teachers."[10]

Morris's Comments

The circumstances and the experiences of the Indians of the Northwest Territories in the 1870's would seem to have been different from those of the Six Nations Indians over 100 years earlier. Along with reporting their requests for both teachers and missionaries, Morris noted that of the Indians he met with on the Saskatchewan River, three of the Bands were "... in a position to receive at once from the Government the grant allowed for the maintenance of schools of instructions."[11] A large school-house at Grand Rapids had just been completed, while at the Pas and at Cumberland, Church Missionary Society schools had been in existence "for some years."[12]

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[8] The Hon. Alexander Morris, The Treaties of Canada with the Indians of Manitoba and the Northwest Territories (Toronto: Willing and Williamson, 1880), p. 63.

[9] Ibid., p. 49.

[10] Ibid., p. 179.

His later comments upon the way in which the joint requests for education and conversion could be met reflect the views of the Government on the need to separate these two ends. While he acknowledges that the "universal demand" for both teachers and missionaries is encouraging, he does not hesitate to point out that while the Government can supply the teachers, "... for the latter they must rely on the churches, and I trust that these will continue to expand their operations... the field is wide for all, and the cry of the Indian is a clamant one."[13]

The Viewpoint of the Churches

Not all of the churches agreed with Morris's viewpoint, either at that time or since then.

A letter to the Hon. David Mills, the Minister of the Interior and Superintendent General of Indian Affairs, from Messrs. Wood and

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[11] Ibid., p. 163.

[12] Many of the adhesions to Treaty No. 5 were signed in school-houses that had already been in operation for a number of years. This, in part, led to the Government's promises to "maintain" rather than establish schools. It also explains why this Treaty included the special provisions to set aside lands "to the Mission established at or near Beren's River by the Methodist Church of Canada, for a church, school-house... and other mission purposes.

[13] Morris, op. cit., p. 194.

Sutherland, General Secretaries of the Methodist Missionary Society, in 1878 made this quite clear:

> "We regard it as a matter of the first importance that the appointment and control of the teachers of our Indian Schools should be in the hands of the authorities of the Missionary Society. Both on account of the influence which they may exert upon the morals of the Indians, and their relationship to the missionaries, under whose immediate direction they labour, and with whose families they would normally reside."[14]

Much later, Hawthorn[15] quoted the Anglican Church of Canada, in its appearance before the Joint Committee of the Senate and the House of Commons in 1960, as still maintaining:

> "The interest of the Church in the education of the Indian people began with the Church's first contact with her Indian people. She provided the means of education because no other organized means was available... We strongly affirm that any tendency on the part of the Federal Government to be the sole arbiter of the educational policy for the Indian people is regretable... There can be no adequate educational programme in a country unless such an education has a strong religious basis."

The Roman Catholic Church has always maintained its position on the integral nature of religion and education, with the result that even until recently in its Indian residential schools "... moral and religious education are also plainly conspicious... perhaps to the detriment of a more technical and... more realistic training."[16]

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[14] Public Archives of Canada, Records Group 10 (Red Series), Vol. 9212, File 2047.

[15] H. B. Hawthorn (ed.), A Survey of the Contemporary Indians of Canada (Ottawa: Queen's Printer, 1968), pp. 52-3.

[16] Ibid., p. 58.

Other churches have tended to soften their positions over the years. From the pugnacious stance of the Methodist Missionary Society in 1878, the United Church of Canada has adopted the position since 1964 of belief in moving toward a position of non-sectarian education for Indian children.[17]

Yet Hawthorn also noted that while realizing the disadvantages of denominational schools, the attitude of the Presbyterian Church of Canada towards Indian education was still "conditioned by certain religious considerations" and that it favoured those schools which best promoted the development of a "moral and spiritual life."[18]

Results of These Attitudes

As was pointed out in the Anglican submission to the Joint Committee, the churches were first in the field of Indian education because no other organization was available. Neither was any other organization, they might have added, as motivated. Consequently, as the field of Indian education gradually became a governmental responsibility, it did so on the basis, especially in the early years, of the utilization of those schools and teachers that were already engaged in the work.

The development of legislation which (a) paralleled that already built into provincial education under Section 93 of the British North America Act, and (b) served to guarantee the maintenance of the general 'status quo' previously established by the various churches, was hardly surprising. Thus, we see the early missionary enthusiasm in Indian education aging into the sectarian concerns over proprietorial rights associated with the Canadian education phenomenon of the "separate school question."

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[17] Ibid., p. 58.

[18] Ibid., p. 60.

What has perhaps been overlooked in this matter, however, is that since 1880, this determination of the religious denomination of the reserve school and the teaching staff has been a matter for the Chiefs and Band Councils to decide upon, as also has been the question of the establishment of separate schools on the reserves.

The Financing of Indian Education

The earliest pieces of legislation concerned with Indian education devoted themselves to the problems of making available some type of financial assistance to provide for the instruction of these youngsters. The most recent and significant pieces of subordinate legislation in this field have also concerned themselves with this matter. In between times, this financial question has been a constant source of contention and concern.

In the beginning, there were the churches themselves and their particular supporting religious, charitable, or philanthropic societies to provide the necessary funds for the education of Indian children. Then, beginning in 1785, throught the efforts of Thayendanegea (Joseph Brant), small amounts of money began to be available from the Military Chest for the payment of the salaries of teachers. However, these funds were paid out only in respect of certain schools, primarily those established by the Indian themselves, and when they closed down or were subsequently taken over by a church organization or missionary society, then the supply of Imperial Government money was terminated.

Beginning at approximately the same time,[19] the process of land acquisition by treaty from the Indians in Upper Canada was begun in earnest. Initially, the returns from these land surrenders were paid, whether in goods or money, at the time of the signing of the treaty. After 1818, however, it was expected that they would take the form of annuities.

In 1829, Major General Sir John Colborne, Lieutenant Governor of Upper Canada, "being desirous of checking the evils of this system[20] and to promote the settlement and civilization of the Indians,"[21] applied to the Secretary of State for the Colonies for permission to apply annuity incomes to the building of houses and developing of farming potential on the reserves, and improving the lot of the Indian children.

Creation of the Indian School Fund

Being similarly concerned, the Secretary of State wrote to the Commander-in-Chief for British North America in 1836, sanctioning him to apply "at least a portion of the sums now expended in the purchase of stores and presents, to the erection of schoolhouses, the purchase of elementary books, and the payment of reserve school-masters, for the benefit of the Indian tribes."[22] He included the stipulation that the consent of the Indians should first be obtained before undertaking such diversionery measures.

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[19] On May 15, 1786, the Ottawa and Chippewa Indians surrendered Bois Blanc Island in the Detroit River, Anderson township and part of West Sandwich in Lambton County. This process was continued steadily until 1836, after which the only other Eastern surrenders were the Robinson-Superior and the Robinson-Huron treaties of 1850.

[20] Annual gifts of clothing were usually given; these were then disposed of by the Indians in order to buy liquor.

[21] Canada, Annual Report of the Department of Indian Affairs, 1922 (Ottawa: King's Printer, 1922), p. 8.

Apparently there was not much enthusiasm on the part of the Commander-in-Chief to this suggestion, and it was not until it was repeated again in 1838 that "some reluctant steps" were taken to see that the suggestion was implemented. By 1845, agreement with most tribes had been reached for the use of part of their annuity funds for school purposes, and these arrangements were formalized in 1848 by the establishment of the Indian School Fund.[23]

Nevertheless, as the records were to show in the years ahead, it was not intended that this Fund should bear the entire burden of the financing of Indian education. The Indian Bands were expected to do their part, and it was anticipated that the churches would continue to contribute their share.

Sharing the Cost of Indian Education

In 1874, Lawrence Vankoughnet, the Deputy Superintendent General of Indian Affairs, wrote to the Visiting Superintendent of the Brantford

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[22] R. F. Davey, "The Establishment and Growth of Indian School Administration," The Education of Indian Children in Canada (Toronto: The Ryerson Press, 1965), p. 2.

[23] It is perhaps of some significance that since the administration of Indian Affairs in Upper Canada had been transferred from the military to the civil authorities, the creation of the Indian School Fund was made possible by diverting to it money that would otherwise have been spent on presents of gunpowder to the Indians.

Agency indicating that $50.00 a year would be contributed from the Indian School Fund towards each of the salaries of the twelve teachers in four schools on the Six Nations Reserve. But he added the rider that "... inasmuch as they (the Indians) derive the entire benefit from the Schools in question, they should relieve the Fund by at least half the charge upon it, by voting the disbursement of that portion of it from their own funds."[24]

Further examples of the way in which moneys from the Fund were spent were contained in various of the Annual Reports.

In 1877, an additional $3,000 grant for use in the Indian schools of Ontario and Quebec was used to supply "apparatus and prizes" to a number of schools[25] while in 1878, a comprehensive picture of the joint financing of the previous year's Indian education was presented.

Bands at four locations in the Parry Sound (Ontario) area had erected their school-houses, and the Department had promised each of them aid to the extent of $100.00, they having agreed to contribute "a similar amount" towards the salaries of the teachers. At three other locations, however, where schools were yet to be built, the full amount of $200.00 was promised by the Department.

The Government of Ontario was reported to have paid into the Fund the $1,598.45 that remained of a Provincial municipal grant to the Wikwemikong Indians of Manitoulin Island, which was then put towards repairs and additions to their own school buildings.

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[24] Public Archives of Canada, Records Group 10 (Red Series), Vol. 1934, File 3550.

[25] Canada, Annual Report of the Department of Indian Affairs, 1877 (Ottawa: Maclean, Roger and Co., 1877), p. 7.

Two new schoolhouses were erected on the Tyendinaga Reserve costing the Mohawks there $350.00 and $335.00 respectively, while the school for the Pottawattamies of the Walpole Island cost their Band Funds $375.00 and that for the Christian Island Band (which included a Council Meeting room) took $460.00. On Cockburn Island, a departmental grant of $50.00 towards the teacher's salary was given, on the promise of the Band that they would board and lodge the teacher among them.

The biggest charge against Band funds was made against those of the Six Nations Reserve. Although they had "until recently contributed nothing" towards the eleven schools on their reserve, during that year the Six Nations Indian Council voted $1,500.00 a year towards their operation matching the annual expenditures by the New England Company, while the Wesleyan Methodist Society gave $400.00 and the Department agreed "to continue its contribution of $550.00 per annum."[26]

This financial involvement developed an even greater imbalance over those early years. In an uncharacteristically mellow moment, this was commented upon by Duncan C. Scott, then departmental Chief Accountant, in an October 1912 memorandum to Frank Pedley, Deputy Superintendent General. "The Six Nations have taxed themselves pretty severely for the maintenance of their Day Schools. They pay each year between six and seven thousand dollars, and the Department at present only gives $450.00."[27]

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[26] Canada, Annual Report of the Department of Indian Affairs, 1878 (Ottawa: Maclean, Roger and Co., 1878), p. 6.

[27] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2009, File 7825-3.

Government Attitudes Towards Financing Indian Education

The Government's view on such matters, however, was that such financial participation by Indian Bands in their own educational programme was the proper course to follow. While they were bound to make provision for Indian education, that provision should be guided by the dictates of fiscal responsibility rather than by ideas of philanthropic magnanimity.

Of particular interest is the outlining of the viewpoint of the Department of Indian Affairs towards expenditures on Indian education by Vankoughnet, Deputy Superintendent General, in a lengthy memorandum to Sir John A. Macdonald, dated September 20, 1882 - viewpoints with which the Superintendent General wholeheartedly concurred.

Responding to a letter from the Bishop of Rupert's Land, Vankoughnet stated that, in connection with Treaty stipulations "under which the Government bind themselves to maintain schools for the instruction of Indian children... the Government have hitherto held that they were not bound under the stipulation in question to bear the expense of the erection of school houses."[28] He went on to add that this maintenance did include providing "the salaries of teachers and school material for the pupils"[29] - a view which would echo the understandings given by Alexander Morris in his Treaty discussions with the Indians.

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[28] L. Vankoughnet, unpublished memorandum to Sir John A. Macdonald, September 20, 1882 (Ottawa: Department of Indian Affairs Archives), pp. 1-2.

[29] Ibid., p. 2.

Governmental policy had, by that time, changed to where, if the Indians cut the logs and erected the walls of a proposed school house, the Department would contribute up to $100.00 to have the building completed.[30] In many instances, however, various churches and missionary societies had already erected the required school houses and "all the Department did was contribute towards the Teacher's salary to the extent of $300.00 per annum."[31] This amount originally depended upon an average daily attendance of twenty-five students; if it fell below that figure, the teacher was paid only $1.00 per month for each pupil in attendance. However, Vankoughnet noted that changes had been made which led to the Government guaranteeing the $300.00 salary, irrespective of the number of pupils involved.

That salary figure only applied to those established "mission schools." In the more recently completed non-sectarian government schools, the salary could go as high as $504.00, depending upon enrollments in excess of twenty-five students.[32]

Vankoughnet concluded his remarks with the observation that "it may be advisable for the Government to bear the whole expense of erecting school buildings on Indian Reserves: They should, however, be of as inexpensive a character as possible compatible with comfort and convenience."[33] And, presaging much later policy, he added: "There is no doubt that the children would be induced to attend the school more regularly were they furnished with a meal in the middle of the day; and the provision of clothing for them would also insure a larger attendance."[34]

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[30] Ibid., p. 2.

[31] Ibid., p. 3.

[32] Ibid., p. 4.

Administration of Indian School Fund

Even with the insistence upon the Indian Band Councils assuming some responsibility for the financing of Indian education, Vankoughnet's message to Sir John A. Macdonald of September 28, 1885, was to be repeated in various forms during the years ahead. He had to close another lengthy memorandum with the words: "It should be added that the condition of the general Indian School Fund will not admit of any additional grants being made from it, as it is already overburdened."[35]

In addition to the frustrations that must have been occasioned by dealing with undue demands upon the amount of moneys available for Indian education, Vankoughnet also had to oversee the clumsy and time-consuming methods of administering the Indian School Fund. As each grant was made from it, a separate Order in Council had to be prepared in order to cover the involved reciprocity from Band Council funds, whether they were in respect of new buildings, repairs to existing school houses, purchase of supplies, or payment of teacher's salaries. This intensively centralized system of administration was only terminated in 1891, when another Order in Council, dated September 1, was passed which did away with the necessity for all the other individual Orders in Council.

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[33] Ibid., p. 12.

[34] Ibid., p. 13.

[35] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2301, File 60259.

Financing of Church-Operated Schools

The involvement of the church in Indian education was expected by the government, as had already been noted, to go beyond just providing for the moral upbringing of their charges. Having begun by funding their particular sectarian schools, they were expected to continue.

That they did so for some time in respect of the operation of day schools has already been observed. The question of residential and industrial schools had to be handled differently, although the same principle of cost-sharing was adhered to very strictly.

The costs of providing a boarding school service, underwritten though it was by the agricultural and homemaking aspects of the programme (which were essential as much for the operation of the school as for the education of the children), were reaching formidible levels by the 1890's. As a result, an Order in Council (October 27, 1892) was passed which set out the basis of financial operations of such schools, a basis which was to continue in effect until 1957.

This Order in Council replaced the system of individual and varied arrangements that had, like Topsy, "just growed." It replaced this system of haphazard total grants by promulgating regulations which (a) made the buildings a joint governmental-church responsibility, (b) saw books and educational supplies coming from government appropriations, and (c) insured that maintenance costs, salaries and other operating expenses were paid for by the church, who would then receive reimbursement (in whole or in part, depending upon their management capabilities) from the government on a per capita basis.

Views on Government Financing of Sectarian Schools

Initially, this per capita grant was $72.00 per student. While the churches welcomed this form of assistance by the government, this did not prevent them from constantly demanding, petitioning, or pleading that the rate of grant be increased.

The Hon. S. M. Blake, writing to the Superintendent General on Indian Affairs on behalf of the Methodist Missionary Society in January, 1905, made it quite clear how they felt about the situation:

> "In regard to the boarding schools, we would respectfully call the attention of the Superintendent General to the impossibility of maintaining them on the present per capita basis, and as these schools, at least those within treaty limits, are established in furtherance of the treaty obligations of the Government, there does not seem to be any sufficient reason why the churches should meet the deficit out of moneys contributed for purely religious purposes."[36]

This was a fairly mild reaction to the situation as the churches perceived it. At one point, in 1901, Bishop Grouard warned that if the grants he requested were not forthcoming, he would "go through the Catholic parishes of Canada and beg for the alms of the faithful, and of course I will make public the painful necessity which forces me to such a step."[37]

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[36] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2301, File 60259.

Compromises in situations such as this were usually reached quite quickly, for as the Hon. T. Mayne Daly, then Superintendent General of Indian Affairs, had pointed out in a letter to Archbishop Langevin in October 1895:

> "We (the government) also know that the denominations can conduct these institutions at a much cheaper rate than the government, and that is one of the reasons why the Government sought to relieve itself of the onus of conducting them."[38]

This viewpoint was reiterated later when Parliament was told that these residential schools were doing good work "at very small costs" to the government, and that "it would be difficult to see how a better or cheaper policy in regard to (Indian residential) schools could be formulated than the one now in vogue."[39]

However, it was necessary, in November of that year (1910), to call a conference of church representatives and government officials in Ottawa, following which new scales, involving minimum and maximum rates and structured to reflect regional costs, were approved. The per capita grant now ranged from $80.00 to $125.00, and would be reviewed periodically from that point on.

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[37] Robert J. Carney, "Relations in Education between the Federal and Territorial governments and the Roman Catholic Church in the MacKenzie District, Northwest Territories, 1807-1961" (unpublished doctor's dissertation, University of Alberta, Edmonton, 1971), p. 87.

[38] Ibid., p. 90.

[39] Annual Report, 1910, op. cit., p. 310.

Government grants never did meet the costs of such school operations, and the complaints by the churches about this disparity was never stilled while they were involved in their operations. Thus Mayne Daly's realistic comments to Langevin were able to be echoed by Harold Cardinal recently when he wrote: "The government was happy to have the Indians domesticated without the expenditure necessary to handle the job itself."[40]

Effect upon Pupil Recruitment

It may have been as a result of these types of financial pressures and necessities that the legislation of 1894 had made it permissible for the Superintendent General to apply the annuity moneys or other Band funds of children committed to industrial or residential schools to be applied to the maintenance of both the child and the school.[41] If so, the results of the legislative changes were unfortunate.

Hayter Reed, the Deputy Superintendent General of the time, sent out letters on December 20, 1894, commenting on the opportunities created by the regulations arising out of the amended legislation. To the Assistant Indian Commissioner in Regina he wrote:

> "Power is given in these Regulations to bring back deserters... Schools which have not their full complement of pupils, such as Battleford and Regina, can now be filled and the Department would like you to communicate with our Agents with a view to securing orphans to fill vacancies... as there will now be

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[40] Harold Cardinal, The Unjust Society (Edmonton, Alberta: M. G. Hurtig Ltd., 1969), p. 54.

[41] Canada, 57-58 Victoria, c. 32, s. 11.

> no difficulty in obtaining pupils to fill vacancies, the Department has decided to discontinue the payment of the thirty days allowance for pupils going out on service."[42]

At the same time, he wrote to E. McColl, Inspector of Indian Agencies at Winnipeg:

> "The Department thinks that it might be advisable to bring back some of the deserters from the St. Paul's and St. Boniface Schools if they have not got their full quota."[43]

This advice seems to have been passed on, and to have been interpreted by some residential school principals as 'carte blanche' to enable them to fill their student "quotas". But it also seems to have served in the intensifying of the inter-denominational rivalry for the bodies and, hopefully, the souls of the Indian children.

It became necessary for J. A. Smart, the then Deputy Superintendent General, to send a memorandum to Secretary McLean on June 12, 1899, asking him to write to the Principal of the Elkhorn Industrial School (Manitoba) and "ask how it is he finds it necessary to send his officers to the St. Peter's Reserve to get pupils."[44] He was also to be advised that "his officer is not very careful as to the means he adopts, but has disparaged the St. Paul's Industrial School and also, I understand, paid the Indians to send their children."[45]

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[42] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2552, File 112220.

[43] Ibid.

[44] Public Archives of Canada, Records Group 10 (Red Series), Vol. 3930, File 117377-1A.

[45] Ibid.

The Rev. Father Hugonnard, Principal of the Qu'Appelle Industrial School, was the center of considerable controversy in his efforts at "recruiting" pupils. He was accused in the early part of 1901 of having "arrested" three boys on a dubious warrant and of having taken them by force back to his school.

A subsequent inquiry at She-Sheep's Band, in the Crooked Lakes Agency, produced the following testimony from the Widow Penna, mother of two of the boys involved:

> "She said that the Rev. gentleman and two police-men overtook her about 25 miles from Qu'Appelle and 40 miles from the Reserve, and without speaking to her, told the police to put the boys in the waggon, she said the eldest boy clung to her but they pulled him away. She was left alone and would not have had a match if one of her boys had not stopped the waggon and given her some."[46]

Although Father Hugonnard seems to have weathered this storm as he had done a previous one,[47] his actions were symptomatic of the way in which many of the residential schools responded to the authority given them under the legislation of the day.

Band Council Reactions to Financial Policies

Church officials were not the only ones to react to the government financial policies in respect of Indian schools. Band Councils, who had to contend with both the government's and the church's involvement in the funding of Indian schools, also had their opinions on the matter.

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[46] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2552, File 112220-1.

[47] Signed affidavits by Manitou-was-to-tin and his wife allege that their son John was lured to the Qu'Appelle Industrial School from the Anglican School at Round Lake. A payment of $8.00 for "expenses of the trip" was involved. Public Archives of Canada, Records Group 10 (Red Series), Vol. 3853, File 78880.

At one time, during the early days, Band Councils had been prepared to go along with government proposals for the allocation of Band funds towards the support of educational services. In 1885, Alex McKilvray, the Indian Agent for Walpole Island, was able to report, as he forwarded a Band Council Resolution granting an additional $100.00 to be paid towards the teacher's salary:

> "there was a large attendance of Indians beside the Council and Chiefs... they were all quite willing to pay this amount saying that they were grateful to the church for paying the largest share of the teacher's salary so long."[48]

Later, however, the Band Council of the Six Nations Reserve, had their own views on the contribution of the churches towards school funds. Beginning in 1911, they had attempted to amend their School Board Regulations in order to exclude the church-nominated trustees from sitting on the Board, wishing to have (with the exception of the Agency Superintendent) an all-Indian Board. The Department had refused to countenance such amendments, pointing out how well the churches had supported the educational endeavors on the Six Nations Reserve in the past.

The minutes of the General Council meeting of November 4, 1913, indicate Chief Smith's reaction to that piece of advice: "We know too well what they did in the past... and as they are not contributing anything towards our School Funds, we claim that they have no right to be on the School Board against our wishes."[49]

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[48] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2301, File 60259.

By the 1920's, their attitudes had hardened even further. Duncan C. Scott, then Deputy Superintendent General, wrote to Gordon J. Smith, the Indian Superintendent at Brantford, on October 29, 1920, pointing out that since the New England Company had been forced to withdraw its financial support from the Mohawk Institute earlier that year, the Department had needed to assume the cost of its operation. The Department considered that the Six Nations Band Council should assume responsibility for orphaned and neglected children attending the Institute, at the rate of $80.00 per capita, or a total of $1,680.00, which should come out of their Band funds, both at that time and in future years.[50] Scott concluded his letter: "I shall be pleased if you will represent this matter to the Council that they will approve the Department's decision."[51]

The reception of this information is eloquently recorded in the Minutes of the Band Council Meeting of November 2, 1920:

> "The Chiefs after listening to the communication from the Department with reference to the arrangements

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[49] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2010, File 7825-4.

[50] The Mississaugas of the Credit River Band were also to be charged at the same rate, to a total of $320; the Chippewas of the Thames, $160; the Moravian Band of the Thames, $480; and the Mohawks of the Bay of Quinte, $960.

[51] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2771, File 154845-1A.

> arrived at in connection with the management of the Mohawk Institute decided that it cannot sanction the payment of any moneys... and if the Deputy Superintendent General has already paid out $1,650 as he claims he has... that money must be refunded back to the moneys of the Six Nations as Mr. Scott is overstepping his authority when he pays out any money whatsoever from the Six Nations funds without first bringing the matter before the Council."[52]

J. D. McLean, Assistant Deputy Superintendent General and Secretary of the Department of Indian Affairs, was undaunted by this position of the Band Council, and he stated the Department's position on the matter in a further letter, dated November 18, 1920, to Inspector Smith:

> "... I beg to say that the decision arrived at by the Band-in-Council in this matter cannot be approved. It is considered that the Band should contribute towards the support of these children... The amount will be transferred from the interest funds at the end of the present fiscal year."[53]

However, the Band Council managed to get in a final word three years later. Russell T. Ferrier, Superintendent of Indian Education, had to report to Scott, in a memorandum dated April 16, 1923, that although the Six Nations Band Council had given approval in January, 1920, to the setting aside of $9,000 annually for payment of teachers' salaries, they were now adamant in refusing to increase this amount by another $2,000 per year. They had passed a Band Council Resolution consolidating their refusal and, as a result, it was with some embarrassment that he had to report "there is not sufficient funds provided to pay the salaries, and, consequently, it has been necessary to carry an overdraft at the bank."[54]

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[52] Ibid.

[53] Ibid.

Teachers in Indian Schools

This uncertainty in respect of the payment of teacher's salaries was another effect of the fiscal policies occasioned by the legislative provisions for Indian education. It obviously had an effect upon the quality of teaching that was to go on in the schools on the reserves. The inadequacy of salary provisions is reflected in the difficulties that were faced in the hiring of teachers. J. Graham, Indian Superintendent at Winnipeg, wrote to Ottawa in November, 1881, pointing out that it was almost impossible to secure competent teachers for the remote Indian schools, even at a reasonable salary, "owing to their having to pay their own travelling expenses, the cost of obtaining provisions at those points, and no mail communication accessible to them."[55] In the Vankoughnet memorandum of the following year, it was reiterated that "the difficulty, however, of inducing persons to accept the position of school teacher on an Indian Reserve is very great, and frequently for a length of time it is impossible to obtain the services of a suitable teacher."[56]

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[54] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2011, File 7825-4A.

[55] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2125, File 24101.

[56] Vankoughnet, op. cit., p. 5.

Sixty years later, it was still being reported "it has become increasingly difficult to secure... teachers for Indian Day Schools in outlying districts."[57]

And during the Special House of Commons Committee hearing in 1951, R. F. Davey, Director of Education Services for the Indian Affairs Branch, had to report:

> "At the present time there are approximately twenty-two Indian Day Schools closed due to lack of teachers. You are all aware of the great shortage of teachers which exists across the Dominion of Canada. If it is difficult to get teachers to work in white schools, you can imagine how much more difficult it is to get teachers to teach in Indian schools."[58]

Difficulties Facing Teachers

The Bishop of Rupert's Land, writing to the Hon. Edgar Dewdney, then Superintendent General, in August 1891, was very explicit about the problems that the policies of the day were creating. He pointed out that:

> "Under the present system the teacher often gets to his Reserve only by the loans or gifts of friends. He then finds himself thrown helplessly among the tents and huts of the Indians. For his future maintenance for many months he is cast on the resources of the Indians, uncertain for themselves, or credit on the part of a Hudson's Bay Company Postmaster, perhaps at a great distance, or on his own fishing and hunting."[59]

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[57] Public Archives of Canada, Records Group 10 (Red Series), Vol. 6001, File 1-1-3.

[58] Canada, Proceedings of the Special Committee of the House of Commons appointed to consider Bill 79, An Act Respecting Indians (Ottawa: King's Printer, 1951), p. 326.

[59] Public Archives of Canada, Records Group 10 (Red Series), Vol. 3836, File 68557.

These views are borne out by the recollection of one of the people who took on as a teacher in a reserve school at the time. Robert Jefferson recalls how, having satisfied the Inspector of Schools that his qualifications from England warranted a teaching permit, he arrived at St. Peter's School (north of Winnipeg) to work with the Indian youngsters. Since this was a reserve school, his salary was "supplemented by a Government grant, but those (Indians)... had great difficulty in raising their quota of the teacher's salary, so the Government grant was all that one could be sure of."[60]

He put in a year and a half on the reserve "boarding with one of the people and living on a diet of fish, bannock and tea" before moving on to the Red Pheasant Reserve where, although he was hired as a school teacher, he had to "first erect a dwelling and stable" in which to live and then build the schoolhouse.[61]

The Department of Indian Affairs was also aware of the problems. In 1882, it reported that a Miss Lyness, "a very successful teacher of Indian children" at Norway House, was labouring under "considerable disadvantages, as her school was never supplied with books, maps or stationery from the Department."[62]

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[60] Robert Jefferson, Fifty Years on the Saskatchewan (Battleford, Sask: Canadian North-West Historical Society, 1929), p. 23.

[61] Ibid., p. 31.

[62] Canada, Annual Report of the Department of Indian Affairs, 1882 (Ottawa: Queen's Printer, 1883), p. 142.

Attempts were being made in 1910 to improve the situation in respect of Day Schools on reserves - apparently not before time.

> "The Indian Day School of the lowest type is a burden to the teacher and an inexplicable punishment to the scholar, almost useless in its result. The problem is to substitute for such a school and institution where brightness and active interest take the place of indifference and a sense of defeat."[63]

Apparently some cognizance of the effects of salary policies had been taken, and whatever pressure had been brought to bear by whatever groups (whether Indian or white, church or government cannot be determined) did result in some changes taking places. For the Superintendent of Indian Schools continued:

> "Much depends upon the teacher, and previously the low rate of pay offered could not command the most suitable teachers; but I am glad that more generous stipends have been fixed, and that Parliament has granted sufficient funds to pay them."[64]

But even by the following year it was obvious that more pressure needed to be applied, for he was then having to report:

> "The surrounding white school sections, which pay much higher salaries than the Six Nations Reserve, cannot fill their vacancies, therefore it can hardly be expected that our school board, with the two handicaps of lower salaries and enforced residence on an Indian reserve, can secure qualified white teachers."[65]

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[63] Annual Report, 1910, op. cit., p. 274.

[64] Ibid., p. 274.

[65] Canada, Annual Report of the Department of Indian Affairs, 1911 (Ottawa: King's Printer, 1911), p. 328.

Into the early 1950's, government policies affecting the salary and employment conditions of the teachers, as well as the nature of the reserve schools, were still having adverse effects upon the education offered to the Indian child. For Davey, in his evidence before the Commons Committee felt bound to point out:

> "... most of our schools are one-room and any of you who are teachers are only too well-acquainted with the added problems involved in teaching thirty odd pupils scattered from Grade 1 to 8. There is also the fact that most of our teachers are forced to do their own house-keeping, draw water, go long distances for food, etc."[66]

Problems with Teachers

Despite the difficulties, some dedicated and effective teachers were involved in educating Indian children over the years, and reference is made of this fact in many Annual Reports and records of Band Council meetings. But in the eyes of the Indian people, and of the Department itself, the overall effects of governmental policies relating to the financing of Indian education tended to result in the Indian child in the school on the reserve receiving less than his fair share of good teaching.

The earlier Annual Reports are the most revealing on this, as they are on many other aspects of Indian education. In 1877, for example, it was reported that there was a "general lack of interest on the part of the teachers in their work,"[67] while in the following year, the North St. Peter's School had to be closed in February because of "the immoral character of the teacher."[68] The teacher at Norway House in 1882 was described as having "no qualification whatever for the position, his education being too limited to be capable of reading or speaking intelligibly in English."[69]

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[66] Proceedings of Special Committee, op. cit., p. 326.

[67] Annual Report, 1877, op. cit., p. 8.

Such outspoken condemnation of teachers, both individually and collectively, in the Annual Reports seems to have been replaced later with more considered generalities, but certain problems still remained and were reported by the Agency Superintendents. E. D. Cameron wrote to Ottawa in December, 1906, concerning one of the teachers on the Six Nations Reserve:

> "The present teacher of the school is Mr. Hubbard who has been most satisfactory to the Board and all concerned until it has been noticed at times he is very peculiar and has shown signs of insanity. Before he was engaged on the Reserve he was a patient in the Hamilton Asylum."[70]

These results of government policies were fairly obvious to the Indian people, and over the years they continued to be painfully aware of these particular problems which faced their children in their attempts to secure an education. Their concerns and their frustrations are typified in the bitter observations of the President of the Indian Association of Alberta, Harold Cardinal, about his own schooling:

> "... the teachers were misfits and second raters... in Grade 8 I found myself taking over the class because my

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[68] Annual Report, 1878, op. cit., p. 9.

[69] Annual Report, 1882, op. cit., p. 143.

[70] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2008, File 7825-2.

> teacher, a misfit, has-been and never-was, sent out by his superiors from Quebec to teach savages in a wilderness school because he had failed utterly in civilization, couldn't speak English well enough to make himself understood. Naturally, he knew no Cree."[71]

Attitudes about the Indian

The attitudes about North American Indians, which resulted in the adoption and continuation of such policies for the education of Indian children, are of interest in respect of this study.

It has been shown how the Indian was considered as a fit and proper subject to be educated for the purposes of conversion and in order to "civilize" him. It has also been noted that the early missionary-teachers involved in this process felt that this could best be done by intimately involving his children with white children, in such a way that their (the white children's) example would make the task easier.

That this did not work soon became clear. Using the Indian School at Sussex Vale as one example of a pattern that was reported upon in similar terms on other occasions, Aiton's commentary indicates that at first the Indians were opposed to sending their children to school. Then, having been induced and persuaded to do so, they gravitated towards the school in order to be close to their children. As a result, the school-master found himself "harassed by these indolent natives" who, since they no longer had the help of their children in hunting, fishing, etc., "camped on his doorstep until he fed them by the dozens."[72]

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[71] Harold Cardinal, op. cit., p. 54.

These frustrating attempts to draw the Indian child into Europeon cultural patterns through education, and the unanticipated result of their parents trying to draw the white settlers into the Indian cultural pattern of communal sharing of the bounty of the most effective "hunter," gradually led to a change in the pattern.

Sir Francis Bond Head

Sir Francis Bond Head, Lieutenant Governor of Upper Canada between 1836 and 1838, is the person most usually associated with the idea of the creation of Indian Reserves. His advocacy of the idea was based, as were so many others applied to the resolving of the condition of the North American Indian, upon a combination of righteous indignation and humanitarian idealism. He was reacting to the "Fate of the Red Inhabitants" at the hands of the white man - a fate that robbed the Indian of his nobility, his possessions and his pride, and gave him instead disease, degradation, and death.

"Whenever and wherever the Two Races come into contact with each other it is sure to prove fatal to the Red Man," he wrote in 1836.[73] Civilization, he continued, in spite of the "pure, honest and unremitting Zeal" of the missionaries, through some "accursed Process (had) blanched their Babies' Faces."[74] The answer, then, was to keep the Indians as far removed from the evil blessings of the immigrant society as possible, in order that they could avoid future polluting contacts, regain their own societal health, and, by pursuing their own developmental paths, prosper in the noble and heroic manner of their ancestors.

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[72] Grace M. Aiton, "The History of the Indian College - Early School Days in Sussex Vale," Collections of the New Brunswick Historical Society, No. 18 (St. John, N. B.: Lingley Printing Co. Ltd., 1963), p. 160.

[73] Sir Francis Bond Head, "Advice on the Indians, 1836," quoted in Robert J. Surtees, op. cit., p. 40.

It was with this in mind that he enunciated

> "... it is necessary to refute the Idea which so generally exists in England about the Success which has attended the Christianizing and civilizing of the Indians; whereas I firmly believe every Person of sound Mind in this country who is disinterested in their conversion, and who is acquainted with the Indian character will agree, -
> 1. That an Attempt to make Farmers of the Red Men has been, generally speaking, a complete failure;
> 2. That congregating them for the purpose of Civilization has implanted many more Vices than it has eradicated; and consequently
> 3. That the greatest Kindness we can perform towards these Intelligent, simple-minded People, is to remove and fortify them as much as possible from all Communication from the Whites."[75]

Although Bond Head's disparagement both of Christian education and of making "Farmers of the Red Men," was not accepted, this officially expressed opinion of a Lieutenant Governor of Upper Canada, supported by the attitudes and views of members of the Indian department, became a corner-stone in the government's policy. As a result, the provisions for Indian education under the Western Treaties were made conditional upon the Indian being settled on the reserves, and having shown his intention to stay there by building a school-house.

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[74] Ibid., p. 40.

[75] Ibid., p. 40.

Attitudes of Departmental Staff

However, while Indian departmental officials favoured Indian location on reserves, they did not necessarily share Bond Head's view of the nobility, either in mind or stature, of the Red Man. An Indian Commission Report of 1858 pessimistically concluded - "any hope of raising the Indians, as a body, to the social or political level of their white neighbours is yet but a glimmering and distant spark."[76]

In 1899, a letter written by C. Todd, Indian Agent for the North-West Coast of British Columbia, contained a not untypical viewpoint about the Indian people of his Agency. He stated:

> "Owing to the inherited blankness of the Indian mind, his inability to fully understand or retain the higher branches of education, the efforts of the teachers in that respect seem to be lost labour... no businessman feels justified in placing Indians in positions of trust or responsibility hence the Indian can find but little use for the higher branches of education... In these (industrial and boarding schools) institutions our Indian boys need not be admitted earlier than nine or ten years of age, nor retained at such schools later than twelve or thirteen years of age, because all the education he needs or can well use, should not require the Government to support him for more tnan three or four years."[77]

Duncan C. Scott, Assistant Deputy Superintendent General, in a 1911 memorandum to the Deputy Superintendent General, Frank Pedley, was incensed that the Six Nations Reserve School Board had attempted to argue with the Department over the regulations established for the operation of the schools on that reserve. In the process of refuting their demands, he expressed serious doubts about their ability to manage their own affairs, and added that he intended to watch the situation closely "as they are undoubtedly full of tricks."[78]

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[76] E. Palmer Patterson II, The Canadian Indians: A History Since 1500 (Don Mills, Ont.: Collier-Macmillan Canada, Ltd., 1972), p. 84.

[77] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2552, File 112220.

Not all departmental officers regarded Indian people as educationally incapable or irresponsible. Agency Superintendent Gordon Smith, in commenting upon a 1912 request from the Six Nations School Board for scholarships to assist capable Indian students in furthering their education, referred to the part already played by Indian parents. He wrote:

> "Robert Martin has already put one daughter through the High School up to the entrance to Normal (School) at his own expense with the assistance of a loan from the Council... John E. Davis has a son who graduated from Queen's Medical College and is at present assisting Dr. Walter Davis on the reserve... he is still paying off a loan... Augustus Jamieson I think deserves more credit than anybody for the way in which he has educated his family, two daughters passed the Entrance to the Normal and became teachers on the reserve... a son Elmer is in his third year at McMaster University, a daughter Nora passed the Entrance in 1909 and a son, Thomas passed in 1911. All this education has been accomplished without any assistance except a small loan from the Department which is being paid up gradually."[79]

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[78] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2009, File 7825-3.

[79] Ibid.

Such arguments did nothing to sway Martin Benson, Assistant Chief Accountant of the Department. He suggested that the Deputy Superintendent General, Frank Pedley, reject the proposed $3,000 scholarship fund as being out of all reason. He felt the most that the Department should contribute was $500.00, adding - "It is a question whether it is a wise policy to go in for the higher education of Indians."[80]

Later, when Duncan Scott was Deputy Superintendent General and Benson was his Assistant, Benson was able to indicate that his (Scott's) earlier judgement about the Six Nations was apparently endorsed by the 'deficiencies' of some of the trustees elected in 1919 to the Six Nations Score Board. He noted with regret that the Department of Indian Affairs could not invalidate the elections even though "Peter Isaac is not the type of man to act as trustee, as his reputation for immorality is very bad, (and) Peter Claus is an ignorant man."[81] Not unsurprisingly, a letter from Scott to the Superintendent of the Indian Agency at Brantford in April of that year indicated that all future trustee elections would be subject to confirmation by the department before successful candidates could assume their official duties.[82]

Attitude of Churchmen on Reserves

During these same years, a number of the officials of the churches involved in the education of Indian children had the chance to express their attitudes towards the Indian.

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[80] Ibid.

[81] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2011, File 7825-4A.

[82] Ibid.

On January 7, 1876, the Rev. James Chance, Anglican minister on the Six Nations Reserve, in writing to E. A. Meredith, Deputy Minister of the Interior (under whose auspices the Department of Indian Affairs operated), stated that his long experience of working among the Indians had "produced within me the strong conviction that the Six Nations are not qualified to have the management of their own Schools even if they were able and willing to undertake their support."[83]

In 1890, the Rev. W. W. Shepherd, Principal of the Mount Elgin Industrial Institution at Muncey, Ontario, was loath to carry out the Department's recommendation that outside fire-escapes be installed at the school to aid in dormitory evacuation. Having commented upon the Indian students' lack of intelligence and gratitude, he added that "(we) cannot well have (outside fire-escapes), as the pupils would be likely to escape when we did not want them to do so."[84]

The Rev. R. Ashton, in his Annual Report to the New England Company (1902) concerning his operation of the Mohawk Institute, recorded some of the problems he had had during the year. In July, he had noted - "Mr. Cameron, Indian Superintendent, came to make inquiries about certain children from Cape Croker whose parents wanted them discharged and had, as usual in such cases, made many lying statements."[85]

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[83] Public Archives of Canada, Records Group 10 (Red Series), Vol. 1976, File 5806.

[84] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2047, File 9212-2.

Even more outspoken in his attitudes about the Indian people was the Rev. George Carpenter. He had been the Anglican minister on the Six Nations Reserve for a number of years, and had been much involved in the development of the Day Schools on the Reserves. In January, 1911, he wrote to Gordon Smith, the Indian Superintendent:

> "I think the record of the Six Nations Indians as a people, re the schools, is conclusive evidence that they are not sufficiently intelligent yet to properly appreciate the schools... The Indian not being in possession of that moral resistance and self-control which only comes through generations of Christian and civilization... I have lived among these people for nearly nine years and... am firmly of the opinion to give the complete management of the schools into the hands of the Indian would be a serious mistake as I do not look upon them as a class competent to do so."[86]

And in 1929, the Rev. C. R. Lett, Principal of St. George's Indian Residential School in Lytton, B. C., was reporting:

> "Truly the Indian child is a favoured individual and sometimes one wonders whether the race as a whole appreciates what is being done... Heretofore (the Indian) was classed as a thriftless, irresponsible species of manhood. This trait is born in him and it is not an easy task for him to cast away this inheritance."[87]

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[85] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2771, File 154845-1A.

[86] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2009, File 7825-3.

[87] Public Archives of Canada, Records Group 10 (Red Series), Vol. 6001, File 1-1-1 (4). N.B. Towards the conclusion of his Report, Lett adds - "It is only in the main a very low class of white man who would lower himself to live with an Indian woman."

Many of these attitudes were reflected in correspondence between the senior officials of the respective churches and church Societies and, as such, were reflected in the ongoing "schooling entente" between those organizations and the government in respect of Indian education.

Effectiveness of Indian Education

The effectiveness[88] of the Indian education system has invariably been subject to a critical scrutiny. It has been expected to produce students who have a sufficient level of academic and manual skills so that they may be (a) self-supporting and (b) acceptable into the non-Indian society. At the present time, the tendency is to view this effectiveness in terms of greater student numbers completing High School grades. In earlier days, less quantifiable measures were used.

It has already been noted how the Indian spokesmen of the Six Nations viewed the effectiveness of the white man's education in 1774; young men graduated "totally good for nothing." Bishop Grandin, writing in the 1880's, was equally as pessimistic. In commenting upon the students who returned from Industrial Schools, he observed:

> "Those who return to their Reserves are for a time the laughing stock of their nation. In spite of their instruction they are less skillful in many things necessary for the Indians. They feel themselves despised; they are humiliated; they strive to become savages again, and they often succeed only too well. The most successful results have been attained by marrying the girl graduates to white men... and in

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[88] For the purposes of this study, the term "effectiveness" will be used to connote a level of education that will enable a graduating Indian student to gain acceptance as a producing member of the non-Indian Canadian Society.

the schools in my diocese, they generally do that."[89]

Lawrence Vankoughnet, as Deputy Superintendent of Indian Affairs, reported to the Hon. Edgar Dewdney, the Superintendent General on his return from a visit to the Mount Elgin Institute in November, 1890, he noted that, in addition to the boys receiving training in "some mechanical art... or husbandry," the girls were instructed in "all the branches in which females of the white working class should be instructed with a view to fit them to fill satisfactorily the positions of good housewives."[90]

Martin Benson, in a report to the Deputy Superintendent General on August 30, 1895, following a visit to the Mohawk Institute, also stressed the effectiveness of the education provided to the girls. Having been "thoroughly trained," a girl's children are taught to speak English and are brought up "to follow her habits of civilization." But when the boys leave school, they return to the reserve, marry an an Indian girl (presumably not a Mohawk Institute graduate), and "reverts to the Indian language, habits and customs, and his children are Indian pure and simple." He concludes that while the Indian man may be the breadwinner, "the woman is the civilizer."[91]

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[89] Public Archives of Canada, Records Group 10 (Red Series), Vol. 6001, File 1-1-1.

[90] Public Archives of Canada, Records Group 10 (Red Series), Vol. 2047, File 9212-2.

[91] Public Archives of Canada, Records Group 10 (Red Series), Vol 2006, File 7825-1A.

Early Press Comments

In 1890, a Toronto Globe editorial advocated universal, compulsory education, "especially industrial education," for Indian children. It was necessary to educate the Indian child "out of barbarianism into civilization and citizenship" and afterwards, to find some way to prevent him from degenerating "into the lazy, loafing, worthless being we too often find him (to be)."[92]

This was a recurring theme in newspaper comments of the day - the concern over the "regression" of the Indian student back into his own culture and community after he had completed his education. The favourite answer to the problem was the creation of "special reserves" that would be available only for settlement by such successful graduates.

Thus the end of Indian education would be to proceed into the perfect Indian limbo - not quite in white society, certainly not back into his own, but preserved and assisted in his own little in-between society, in which he and the fruits of his labour could jointly blossom as tributes to the success of his "education." As it was expressed in a letter to the Manitoba Morning Free Press in 1895:

> "In plain words, their education is not fitting them to earn a living. The boys and girls who leave the industrial schools go back in course of time to their reserves... it would be interesting to learn from the Indian Department whether its returns show any Indians educated at the schools in civilized employment, and how many... the Indian girls are expected to stay at school til 17 or 18 years of age, at a cost of $75.00

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[92] Editorial, The Globe (Toronto), February 1, 1890.

> per head per annum to the government, for what purpose I cannot see... Far better teach them to be good house servants, make butter, mend clothes or something useful. Why should those girls be better brought up than their white sisters?"[93]

An article the following year in the same newspaper reported on a speech by the Rev. Professor Baird to an Indian Missionary Conference held in Winnipeg. The title of the article was - "What is to be done with the Indian pupils when they graduate?" - and, in referring to the reserve system as being "in its nature... bad," it advocated (a) getting the children away from the reserve, (b) breaking up the reserves and (c) in any case, keeping the children away from their parents and "the demoralizing force of the surroundings of a heathen home."[94]

It was also in 1896 that a second, and recurring, theme in the public consideration of Indian education - concern over its financing - received some attention.

The Ottawa Evening Journal, in an editorial about the operation of Indian schools in Western Canada, expressed the concern that "a very large expenditure is made on these schools and there is a general and growing belief that an adequate return is not received for the money expended."[95]

This comment may have been a reflection of the very specific questions raised two weeks earlier in the Regina Standard. Its editorial expressed concern that the Parliamentary expenditures on Indian education in the Northwest Territories, originally budgeted as $285,000, had been supplemented to a total of $301,000 for the year. "It is a little hard to imagine how the education of Indian children can be made, legitimately, to over three hundred dollars per head. Every child is costing close on a dollar a day,"[96] it stated and while it went on to agree with treating the "young Indian wards" on a philanthropic basis, it railed against "philanthrophy run mad." The editorial concluded by referring to a report appearing in the Calgary Herald on a new industrial school recently completed near that city. The headline of the article had read "A Sumptuous Palace for the Young Redskins - They will learn the Three R's and the Various Trades." It put the question - "Surely it is possible to do justice to the Indian youth without boarding them in 'sumptuous palaces'."[97]

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[93] Letter to the Editor, Manitoba Morning Free Press, June 29, 1895.

[94] Article, Manitoba Morning Free Press, November 7, 1896.

[95] Editorial, The Evening Journal (Ottawa), December 9, 1896.

The Edmonton Bulletin also carried an editorial labeled "Indian Education" on January 4, 1897. It asked very similar questions concerning the financing of education for young Indians and also noted:

> "The difficulty is not in educating the young Indians, but in making them useful citizens after they have been educated... the young Indians soon lapse into their old ways after they return to their people... If the young people could be settled in colonies by themselves, or placed out among the whites, no doubt good results would be obtained from them."[98]

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[96] Editorial, The Standard (Regina), November 26, 1896.

[97] Ibid.

[98] Editorial, The Bulletin (Edmonton), January 4, 1897.

With these comments in mind, it is interesting to note the opinion expressed in an editorial entitled "Educating Young Indians" which appeared in the Toronto Globe in 1935. After discussing the process of their education, it stated, in part:

> "These (Indian) children will have caught a glimpse of civilization, enjoyed some of its comforts, been well fed and clothed, had a taste of education, but back among the 'wigwams' memories of this experience will create only mental suffering."[99]

Other Viewpoints

Churches involved in the education of Indian children themselves expressed similar viewpoints.

The Roman Catholic Archbishop of Sarysa, who was also Apostolic Delegate, writing to a Miss Hughes, the Secretary of the Association for Befriending Indian School Graduates, on September 14, 1901, maintained:

> "It would have been better to allow them to follow the customs of their sires than, after filling their minds with ambition for a superior education, to blight their hopes and to allow them to retrograde into their former way of living."[100]

The Hon. S. H. Blake, in another part of his letter to the Superintendent General of Indian Affairs of January, 1905, referred, on behalf of the Methodist Missionary Society, to increases in funding of Day School operations, complaining that "unless good results on a larger scale can be secured, the present expenditure can hardly be justified."[101]

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[99] Editorial, The ~~Globe (Toronto)~~, May 21, 1935.

[100] Public Archives of Canada, Records Group 10 (Red Series), Vol. 6001, File1-1-1.

[101] Public Archives of Canada, Records Group 10 (Red Series), Vol. 6001, File 2115.

Then he went on to outline the Society's views on how those "good results" could be obtained. He wrote:

> "To secure useful results it is essential that the Indian children, during the educational period, should be kept entirely apart, wherever possible, from the association of life on the reserve... If taken in at the age of 12 or 14 years they should not be allowed to depart (save under exceptional circumstances) til they have attained their majority, or say 18 years for the girls and 21 years for the boys... (But) when leaving the institution, the only refuge is the reserve, or worse still, the hunting lodge, where a few years will undo, in most cases, many years of careful training... he (should) be given land in his own right, 40 or 50 acres to begin with, and the promise of the balance of a quarter section when he has shown his ability to use it properly."[102]

The Rev. Mr. Watts, presenting a brief on behalf of the Anglican Church of Canada before the Special Commons Committee in 1951, also maintained that "Ultimately no educational advance is likely to be permanent unless the home advances or unless the advanced pupil breaks away from his backward home."[103]

And what of the parliamentarians? Their comments covered the concern for expenditures on Indian schools exhibited by Mr. McMulnen (North Wellington) in 1894 when, after delivering his observations on the parliamentary appropriations, he suggested that "this level of support, when compared with that for other outlying schools, could be cut down."[104]

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[102] Ibid.

[103] Proceedings of Special Committee, op. cit., p. 392.

[104] Canada, Debates of the House of Commons, Vol. XXXVIII (Ottawa: Queen's Printer, 1894), p. 5553.

They covered the estimation of the ability of the Indian offered by Mr. Forke (Brandon) in 1923: "As those know them are aware, the Indians have an almost childlike temperament... they lack the white man's persistence, his sticktoitiveness."[105] And they also included the observation by Mr. Bryce (Selkirk), given during a long account of a visit during 1946 to a number of Indian reserves in his riding:

> "I visited the residential school (at Norway House) and noticed that the children wore excellent clothing made from discarded army uniforms. I think that this is one of the best uses that discarded uniforms could be put to."[106]

But of particular note were the views delivered in the House of Commons by the Hon. Clifford Sifton, Minister of the Interior and Superintendent General of Indian Affairs, on July 18, 1904. He admitted that, in his view, the attempt to offer a "highly civilized education" to the Indian student, sometimes by keeping him in school "until he was 22 or 23 years of age"[107] was virtually a failure. He added:

> "I have no hesitation in saying, (we may as well be frank) that the Indian cannot go out from a school, to make his own way and compete with the white man...

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[105] Canada, Debates of the House of Commons, Vol. CLVII (Ottawa: King's Printer, 1923), p. 2147.

[106] Canada, Debates of the House of Commons, Vol. CCLVIII (Ottawa: King's Printer, 1947), p. 4433.

[107] Earlier in the debate, the Minister had stated that he had found Indian boys and girls being kept in schools until they were "23, 24 and 25 years of age" - this when the legal age of retention was 18 years. Indian people have alleged that this type of practice was related to the legislative requirement that the annuities and band fund entitlements of such "children" were applied to the operational budget of the school.

> He has not the physical, mental or moral get-up to enable him to compete. He cannot do it. The result has been to a large extent the Indians who have been educated in this way have gone back to the reserves."[108]

The Minister, however, did not leave it at that. He pointed out that an experimental system had been inaugurated in the Qu'Appelle Inspectorate (perhaps as a result of the pressure created by the public comments referred to in earlier newspaper editorials) whereby the Indian Superintendent, Mr. Graham, had "set apart a portion of the reserve where the pupils from the industrial and boarding schools are encouraged to settle and take up allottments, so that they have practically a separate settlement."[109]

This experiment took some permanent shape under legislation which created the "location ticket." This vehicle, originally provided to enfranchising Indians to enable them to secure permanent possession of a section of Indian reserve lands, was extended to become available to all Indians resident on reserves. The issuance of a location ticket was conditional upon the demonstrated ability of the applicant to be able to manage efficiently the lands thus granted and required to have received a sufficient degree of education commensurate with his new position of being one step removed from other Band members. This system of a "reserve within a reserve" went quite a way towards providing the type of situation demanded by those previously-quoted critics of the dissipation of educational gains made by Indian graduates of the industrial and boarding schools. Initially formulated in the Indian Act of 1880, the "location ticketing" concept is still extant in the present Indian Act under the title of a "Certificate of Occupation," but its issuance is now subject not to any demonstrated competency or educational background, only to an interest in the land by "device or dissent."[110]

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[108] Canada, Debates of the House of Commons, Vol. LXVII (Ottawa: King's Printer, 1904), p. 6948.

[109] Ibid., p. 6948.

Recent Viewpoints

The majority of these statements, reflecting the attitudes held by the people who made them or those of the organizations on whose behalf they were speaking, are of early vintage. These were the attitudes, opinions and viewpoints of the late nineteenth century and early twentieth century, in the main. But even those expressed up until the last fifteen years seem, in certain instances, to have changed remarkably little. Is this still the situation in the 1970's?

Senator Carter, speaking as a member of the Special Senate Committee on Poverty during hearings in January 1970, was concerned that attitudes expressed in the brief by the Department of Indian Affairs seemed to have changed but slightly. He felt bound to state:

> "It seems to me that inherent in the description of what has taken place has been a superior attitude on the part of the officials who seem to have taken the attitude that not only did they know best but they were dealing with an inferior people. Also stemming from the brief I would say there was a lack of any attempt on the part of the officials to understand

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[110] Canada, R. S., c. 149, s. 20 (5).

> the cultures of the people with whom they were dealing."[111]

But it was in the Fifth Report of the Standing Committee on Indian Affairs that the fullest expression was given to the views of Parliamentarians about Indian education.

The Watson Report, 1971

This Report, presented by the Chairman of the Committee, Mr. Ian Watson, to the House of Commons on June 22, 1971, expressed both its opinions about the effect of departmental attitudes upon the development of Indian education and brought down a number of far-reaching recommendations.

It began by pointing out that the education of Indian and Eskimo children,[112] "in particular Indian young people," has been a victim of the "day-to-day, year-to-year improvisation attitude of successive governments which regarded Indian education as a passing thing, soon to be handed over to the provinces."[113] It went on to advocate, as its first recommendation:

> "That the government should continue its policy that no transfers of education programmes from the Federal

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[111] Canada, Proceedings of the Special Committee of the Senate on Poverty (Ottawa: Queen's Printer, 1970), p. 14.

[112] Section 4(1) of the Indian Act (R.S., c. 149) states: "A reference in this Act to an Indian does not include any person of the race of aborigines commonly referred to as Eskimos." The Supreme Court of Canada, however, is a judgment handed down on April 5, 1939, held unanimously that the term "Indian" in Section 91(14) of the British North America Act (1807) does include the Eskimo inhabitants of Quebec.

[113] Canada, Proceedings and Evidence of the Standing Committee of Indian Affairs and Northern Development, June 22, 1971 (Ottawa: Queen's Printer, 1971), p. 4. N.B. The full text of the Chairman's opening remarks is quoted in Appendix B of this study.

> level to provincial systems take place without the express and clear approval of the majority of the parents in each community concerned."[114]

Other recommendations included curriculum changes in Indian schools to include Indian history and cultural courses, and the use of native languages as the language of instruction throughout the pre- and primary school years. It also specifically urged that:

> "Over a phased period of five years that pre-school instruction be made available to all Indian and Eskimo children starting with the three year old category."[115]

As for Indian student residences, it recommended the phasing out of their use for younger children, noting that it hoped to see "an early end to a system which sees children as young as five or six separated from their parents for eight or nine months of the year."[116]

It also had two recommendations concerning School Committees. It felt that their setting up, in conjunction with the Regional Indian Associations and parents, should continue to be encouraged, and that serious consultations should be entered into with local, provincial, and national Indian Associations to study the establishment of fully-fledged School Boards on the reserves. It went on to say that if specific suggestions came out of these consultations, then changes in the Indian Act should be "drafted and passed without awaiting the total approach to the Indian Act indicated in the Government's policy declaration of June, 1969."[117]

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[114] Ibid., p. 5.

[115] Ibid., p. 8.

[116] Ibid., p. 9.

The Report was very strong in its recommendations that Universities provide more Indian content courses, that the Government provide more incentives to encourage greater enrolment of Indian and Eskimo students at the post-secondary level, and that more relevant programmes of teacher, and teacher-assistant, education be introduced by the Universities. Stopping barely short of advocating that the Federal government create its own programmes if present institutions are unwilling or unable to introduce the necessary new programmes, the Report stated:

> "If any real progress is going to be made in improving the educational system serving Indian and Eskimo people, it is elementary that we start with a reform of the teacher training programmes required of those teachers who teach Indian and Eskimo children."[118]

In total, it reflected an attitude on the part of Parliament that is a far cry from the previous approbation of the use of cast-off Army uniforms as clothing for Indian children, and made recommendations, as has been shown, that went far beyond any previous Parliamentary commitments to Indian education.

But were these sentiments ones given isolation, or were they indicative of a wider change of attitudes towards Indian education?

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[117] Ibid., p. 13.

[118] Ibid., p. 16.

The Government White Paper of 1969

In June, 1969, the Minister of Indian Affairs, the Hon. Jean Chretien, introduced into the House of Commons the long-awaited Government Policy Statement in respect of Canada's Indians. It contained six major policy recommendations, one of which had a direct bearing upon Indian education. This was the fourth of the six points presented, and it dealt with the Federal government's viewpoint that all services to Indian people come through the same channels and from the same government agencies as serve all other Canadians. These, of course, would include educational services.

This attitude of the government stemmed from the central theme of the policy paper, which was that all legislative and constitutional bases of discrimination against the Indian people should be removed. It argued that if Indian people continued to be treated differently in terms of being bound or governed by different statutes from those which bind or govern other citizens, then the chances of them ever gaining full acceptance as equal partners in society, or of achieving complete social, economic, and political equality, would continue to be in question. In acknowledging that the record of the treatment of Indian people was anything but one to be proud of, it concluded that the best way of eradicating those injustices and inequities was by the removal of any grounds for legal discrimination, particularly those inherent in the Indian Act.

The reaction of Indian leaders to this suggestion of the removal of legal and constitutional discrimination, and to the further advocacy that education services to Indian people originate with provincial authorities, was explosive. If there was discrimination against Indian people under the present Indian Act, there was also discrimination in their favour under its terms as well. If there was constitutional discrimination against them under the provision of the British North America Act, then, until their social and economic status had been very significantly improved in relationship to other Canadians, they would rather take their chances on that type of discrimination than on other types should its terms be amended. And as for the provision of educational services exclusively by the provinces, even though the Federal government continued to foot the bill, they pointed out that (a) their "treaty rights" to education were with the Queen and, through her, the Federal Government directly - not the provincial governments, and (b) if they were to receive the same level of educational "equality" that the Metis people had been receiving from provincial governments over the years, then again they were not prepared to countenance any such transfer.

In spite of the Minister's subsequent assurances that the Policy Statement was not a hard and fast statement of government intentions, but was intended to be and, as far as he was concerned, was a vehicle for further discussion of these and other points raised in the statement itself, Indian antagonism continued to be generated towards its contents.

Indian Viewpoints

The statement made by George Manuel, President of the National Indian Brotherhood, before the House of Commons Standing Committee on Indian Affairs, was very explicit in its voicing of Indian sentiments about education.

> "Indians have never been involved in their own education. Your government had contracts with the religious institutions to supply education for Indian people, with no

> Indian involvement. And when the time came and you felt that religious institutions could not handle it, your government went to provincial governments, without any input, and made agreements with the provincial government in isolation from Indian people, from Indian parents, whose children have to live with the day-to-day hardships, day-to-day discrimination. This is what our people are faced with."[119]

Later, in those same hearings, Harold Cardinal, President of the Indian Association of Alberta, expressed his concern this way:

> "If the Department of Indian Affairs can make the major portion of its funds in any area available to non-Indian schools why can that money not be re-channelled and put into Indian communities to serve the Indian people themselves?"[120]

In reply to a question concerning the aims of Indian education as he saw them, Mr. Cardinal replied:

> "All we want to do is have the resources available to us to determine the best way, as individuals and as Canadians, in which we can contribute to society whether it is by building communities instead of living in poverty-stricken communities, or whether it is acquiring in our communities the skills we need to be able to go out and to fit in the larger non-Indian society rather than being stuck in some urban slum."[121]

"Indian Control of Indian Education"

The crystallization of these viewpoints advanced by Mr. Manuel and Mr. Cardinal have appeared in the recent policy paper, entitled

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[119] Canada, Proceedings and Evidence of the Standing Committee of Indian Affairs and Northern Development, November 25, 1971 (Ottawa: Queen's Printer, 1971), p. 25.

[120] Ibid., p. 76.

[121] Ibid., p. 76.

"Indian Control of Indian Education," prepared by the National Indian Brotherhood and presented by Mr. Manuel to Mr. Chretien on December 21, 1972.

In this statement, the National Indian Brotherhood formulates both the philosophy behind, and the practical means to achieve its realization through, Indian education as the Indians see it.

It begins by pointing out that the traditional Indian way of education is for the Indian adult to see that each child learns what it is necessary for him to know in order for him to achieve a good life. Education today is needed as a setting in which the "Fundamental attitudes and values" of the Indian tradition can be learned, for the Indian people wish their children's behaviour to be shaped "by those values which are most esteemed in our culture."[122]

These are the concerns that led the Brotherhood to " reclaim our right to direct the education of our children" through the two educational principles "recognized in Canadian society," namely (a) parental responsibility and (b) local control of education. The statement goes on:

> "Indian parents seek participation and partnership with the Federal Government, whose legal responsibility for Indian education is set by the treaties and the Indian Act... it is the financial responsibility of the Federal Government to provide education of all types and all levels to all status Indian people, whether living on or off reserves."[123]

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[122] National Indian Brotherhood, Indian Control of Indian Education (Ottawa: Mail-o-Matic Printing Co. Ltd., 1972), p. 2.

[123] Ibid., p. 3.

It also strongly affirms that "any transfer of jurisdiction for Indian education can only be from the Federal Government to Indian Bands"[124] and that any responsibility which provinces may ultimately assume for Indian education derives from contracts negotiated between Band Councils, provincial school authorities, and the Federal Government. Where Bands wish to form school districts within the Federal Indian Educational System, they must be recognized by provincial authorities. As for representation by Indian parents on provincial school boards whose district schools are attended by Indian children, it must be adequate enough to provide some real opportunities for shared decision-making by and with those Indian parents, and must move out of the realm of permissive or conditional legislation.

The statement proposes the setting up of Band Education Authorities, which would have the power to plan for and provide the complete range of school facilities and services needed by the local Indian community. It also advocates that where Indian Bands wish to take over the administration and financial control of Indian Student Residences, they should be given the full assistance necessary in order to do so.

The policy outlined in the statement also includes a variety of recommendations about curricula, language programmes, teacher and counsellor preparation and cultural education centres. In total, it is a straightforward, no-nonsense document that places before the government a blueprint for the controlling involvement of Indian people in the education of Indian children. While not changing the legal context within which such educational services are offered to Indian children, acceptance of its recommendations would certainly bring into being administrative concepts that have been often talked about but never realized. In the process, the present legal basis upon which such services have been provided would be enlarged and broadened far beyond those dimensions within which it has operated to this point in time.

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[124] Ibid., p. 5.

Present Government Viewpoint

How has the Federal Government reacted to this expression of desired destiny by the National Indian Brotherhood? Its reply was foreshadowed by by the Minister's statements to the House of Commons Standing Committee on Indian Affairs in November, 1971.

At one point in the discussions of that Committee, Mr. Chretien stated:

> "Whenever we want to sign an agreement with the provinces, since (I have been) the Minister, the policy of my department is that no agreement with the provinces is signed unless the Indians approve and we ask them to approve the basic agreements with the provinces. It is the policy of the department and I have enunciated the policy that no Indian kids who are right now in a Federal school will be forced to go into a provincial school if the Bands concerned do not approve it."[125]

Later, he explained that he had already written to the provincial Ministers of Education, to "persuade them to try, when there are enough Indian kids in their schools, to give them some special courses in Indian culture, in Indian language, and in folklore and those things."[126]

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[125] Proceedings of Standing Committee, November 25, 1971, op. cit., p. 29.

Further along in his testimony, the Minister explained how excited he was over a development in Saskatchewan where, on one reserve, "there are going to be federal schools and the white children will be going to those federal schools. It will be integration in reverse."[127] And, referring to the Blue Quills Indian Residence affair, he pointed out that, since the Indians were prepared to take over its operation as the church withdrew, it was a "good occasion to try to organize a school board, run by the Indians who could run that school. It was the first in Canada, and I was very proud of it."[128]

Thus, when he made his reply to the National Indian Brotherhood Policy Paper on Indian control of Indian education, it came as no real surprise, but with a great sense of satisfaction for the Indian people, when he stated:

> "I and the staff of my Department consider the Brotherhood's paper as a significant milestone in the development of Indian education in Canada. I have given the National Indian Brotherhood my assurance that I and my Department are fully committed to realizing the educational goals for the Indian people which are set forth in the Brotherhood's proposal. In consultation and cooperation with the Indian organizations, my Department will begin immediately to effect the educational changes for the Indian people that they have requested."[129]

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[126] Ibid., p. 30.

[127] Ibid., p. 49.

[128] Ibid., p. 53.

[129] The Hon. Jean Chretien, "Statement on the Policy Paper of the National Indian Brotherhood," speech delivered by the Minister of Indian Affairs in Ottawa, January, 1973; p. 3.

This official attitude of the Minister for Indian Affairs, both reflecting his own personal beliefs and outlining governmental policy in these matters, is far different from that expressed by an unnamed civil servant who, in reply to an application from an Indian person for a teaching position on the reserve near Chatham, Ontario, wrote to the Deputy Minister of Education on December 1, 1918:

> "Re the Indian Student, Clifford Tobias, I beg to say that his academic standing might be sufficient, especially if his term standing in High School were uniformly good. But he could not teach them Horticulture and Agriculture. I would not advise putting any Indian in charge of an Indian School. These children require to have the "Indian" educated out of them, which only a white teacher can help to do.
> It would be much better to select a white, returned soldier of equal or higher attainments, and make an effort to provide a home for him on the Indian Reserve, near the school.
> An Indian is always and only an Indian and has not the social, moral and intellectual standing required to elevate these Indian children, who are quite capable of improvement."[130]

Since Indian education is no longer concerned with eradicating the "Indian" from the students it serves, but is concerned more with insuring that their educational opportunities are equated with those available to all other Canadian youngsters, then it becomes possible to assess what status the Indian community, the Indian parent, and the Indian child enjoys in Canada during the 1970's.

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[130] Fraser Symington, The Canadian Indian (Toronto: McClelland and Stewart, 1969), p. 228.

CHAPTER VIII

THE STATUS OF THE INDIAN COMMUNITY IN EDUCATIONAL MATTERS

In order to be able to comment upon the current status of the three major Indian elements involved in public education in Canada - the Indian community, the Indian parent, and the Indian child - it will be necessary to clarify what is meant by the term "status."

What is meant by "Status"?

It would be possible to attempt to confine such considerations to the outlining of the strictly "legal status" of these three parties. (Other studies, to which reference was made earlier, made that type of definition in respect of the non-Indian context of the Canadian Public School Board, the Canadian pupil, and the Canadian teacher.) But, in doing so, it would be necessary to disregard many areas in which Indian people are exercising certain powers, or receiving certain benefits, that go beyond any legally established position (i.e. through legislation or the judicial process).

Thus this "status" may be, in some cases, either a legal status (as prescribed within Canadian law) or an extra-legal status (going beyond what is prescribed within Canadian law). In examining the nature of this extra-legal status, it is necessary to consider briefly the operation of three of the elements of human interaction - authority, power, and influence.

Harold Lasswell, the political scientist, describes authority as the legitimacy to make decisions, and an authoritative decision-making system as one in which actions are perceived as legitimate.[1] Power, on the other hand, is described as participation in the making of decisions,[2] or the practicing of 'coercive influence' based upon the threat or expectation of 'severe' penalties or sanctions. Influence itself refers to the relationship in which one 'actor' induces another to act in a way in which he would not otherwise act.[3]

Thus it might be possible to describe a hierarchy in the development of this "status" of Indian people that would relate both to these concepts and to the question of legal and extra-legal status.

At the base of such a hierarchy would be that extra-legal status which would derive from the general influence exerted by the Indian people in what will be discussed, for example, concerning the changed role of the School Committee from 1963 to 1973.

Next would be the extra-legal status derived from the specific exercise of power, with its threat of either the non-cooperation of Indian people or their active opposition, both physical and via the mass-media, to exclusion from the decision-making process which affects their future. Examples of this will be seen in the discussion of Federal-Provincial agreements.

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[1] Oran R. Young, Systems of Political Science (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1968), p. 70.

[2] Harold Lasswell and Abraham Kaplan, Power and Society (New Haven, Conn.: Yale University Press, 1950), p. 75.

[3] Robert A. Dahl, Modern Political Analysis (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1963), p. 40.

At the highest level of this hierarchy would be the legal status of the Indian derived from the legitimacy which is his, within Canadian law, to make decisions or to receive benefits in respect of public education.

It will be the combination of the results from the working of this hierarchy that will be considered in describing the "status" of the Indian community, the Indian parent, and the Indian child in this study.

Status of the Indian Community Prior to 1951

The status of the Indian community prior to 1951 in educational matters seems to have been largely that as defined by the various *Indian Acts* over the years. In effect, the Indian community enjoyed some legal status, but its power and influence seem to have been minimal.

It has been seen how, prior to Confederation, the Indian community was merely a recipient of whatever legislation was enacted concerning Indian education. The provision of funds for books, for paying for tuition and board, and for the securing of teachers for Indian children was the intent of the earliest statutes, while later ones concerned themselves with (a) the inclusion of Indian lands into white municipalities and (b) the "encouragement" of individual Indians to discard their Indian status. It was not until after Confederation that the nature of these legislative provisions began to change when, in 1869, Chiefs and Band Councils were given the authority to frame rules and regulations concerning the construction, maintenance, and repair of school houses on the reserves.[4]

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[4] Canada, 32 Victoria, c. 6, s. 12(6).

In 1880, the authority of the Chiefs and Band Councils was extended to cover the religious designation of the reserve school teacher and the approval of separate schools on reserves.[5] By 1884, they had been granted the opportunity to make rules and regulations concerning the attendance of Indian children between the ages of six and fifteen.[6] However, it was not until 1920 that any further extension of the range of their authority was added. In that year, the Chief and Council were given the right to inspect the schools which their children attended.

Even though the Chiefs and Councils had this degree of legal status, it was one that was still limited, for the exercise of the authority which pertained to it was subject to various levels of constraint. The Governor in Council, for instance, had to approve any rules or regulations made by Band Councils concerning the construction, maintenance, and repair of school-houses, school attendance, or the establishment of separate schools. School inspections had to be countenanced by the Indian Agent and the School Principal. Only in the matter of determining the religious denomination of the teachers in schools on the reserves were the Band Councils free of specific control from outside their community.

Control Exercised by Indian Communities Prior to 1951

Given this legal status, to what extent were the various Indian Bands able to exercise this limited control over the education of their children?

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[5] Canada, 43 Victoria, c. 18, s. 74(1).

[6] Canada, 47 Victoria, c. 27, s. 10.

Some examples of the sorts of decisions that some Indian School Boards tried to make, and the response these decisions engendered from the Department, have already been given. What is of interest in these cases, however, is that the decision-making authority was given, under terms of the legislation, to the Chiefs and Band Councils. There was no mention made of it devolving upon "School Boards" or "School Trustees" and yet this is what happened in many cases.

The creation of School Boards on the reserves seems to have stemmed from both the desire, on the part of some Bands, to have this type of internal organizational structure for the better management of their own affairs, and the active promotion by Indian Agents, following directives from Ottawa, of the concept. From the records available, it appears that between 1890 and 1930 there were about thirty Indian School Boards active from time to time, mostly for a limited duration, and that they did pass regulations concerning school attendance and the general operation of schools, they were active in the areas of school maintenance and repair and they had some say in teacher hiring.

The School Board of the Six Nations Reserve near Brantford, Ontario, has already been cited as an example of the ability of the Indian community to attempt to exercise the authority derived from the legislation of the day. Their experience in the area of the framing of regulations for the operation of schools on the reserve, and their lengthy struggle to determine the status of their own internal structure, give a special insight into what was possible for Indian communities during that period.

The Status of the Six Nations School Board

In 1895, Martin Benson reported to the Deputy Superintendent

General of Indian Affairs following an inspection tour of the schools on the Six Nations Reserve. He included in his report a copy of the regulations drafted by the Six Nations School Board which were in force on the reserve. They included the following regulation concerning pupils attending Six Nations Schools:

> "No child under four years of age can become a pupil in any of the Board Schools, and no child of white parents residing on or near the Indian Reserve can become a pupil without first obtaining the consent of the Board, and if such white children are admitted they are required to provide their own books, etc."[7]

However, later problems arose over the determination of the membership of the School Board. On March 14, 1906, His Excellency the Governor-General in Council had approved regulations for the management of the Six Nations Indian Schools which stated that these schools should be governed by a School Board consisting of nine members - "five Indians to be chosen by the Six Nations Council, three whites, representing the joint interests of the New England Company, the Church of England, and the Methodist Church, and the Indian Superintendent as representing the Department, who shall act as Chairman of the Board."[8]

Within five years, the Six Nations Council were urging changes in these regulations. They had set up a committee to suggest needed revisions to the regulations late in 1910, and on December 8 of that year, they presented their recommendations, which featured the removal of the white church trustees from membership of the School Board.

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[7] Public Archives of Canada, Records Group 10 (Red), Vol. 2006, File 7825-1A.

[8] Public Archives of Canada, Records Group 10 (Red), Vol. 2008, File 7825-2.

They pointed out that the Chiefs appointed to serve on the Board were quite capable of doing so, and, in addition:

> "As the New England Company represented by the Anglicah (sic) clergyman has long since withdrawn their support from the schools upon the reserve, as also the Methodist Conference, neither of these denomination of religion have any financial interest at stake in these schools now, therefore the clergymen of these denominations should not serve on the School Board any longer, but they should confine their work solely to their ministerial duties to the people and the church which requires all their time."[9]

Commenting on these suggestions when he forwarded them to the Department on December 27, 1910, Superintendent Gordon J. Smith noted:

> "The Council appointed a committee to revise the School Regulations on the reserve and they further decided that the only trustees on the School Board shall be Indians and myself ex officio. The reasons given for this are that neither the New England Company nor the Methodist Conference give any financial assistance to the schools. While this is true it is also true that the missionaries are very useful members of the School Board but the Indians will I am sure be capable of conducting the School Board business without the assistance of the white trustees. The Council has shown a marked tendency to encourage education on the reserve increasing the appropriation for salaries and building and equipping new schools and therefore it would be a mistake to do anything to bring about any antagonism between the Council and the Department over educational matters. For these reasons and for the further fact that neither the New England Company nor the Methodist Missionary Board have any proprietary interests in the school property or the reserve, I beg to recommend that the Council's decision be approved."[10]

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[9] Public Archives of Canada, Records Group 10 (Red), Vol. 2009, File 7825-3.

[10] Ibid.

All the correspondence concerning the reaction to the Six Nations Council move is not available, but the clergymen involved were bitterly opposed to it, and they obviously drew the matter to the attention of their local M.P., Mr. H. H. Miller. A reply to him on January 20, 1911, from Frank Pedley, Deputy Superintendent General, pointed out that the Department had not "acquiesced" to the views of the Six Nations Council, that His Excellency the Governor in Council would need to approve any such changes, and that, until then, "the representation on the Board will remain as it is."[11]

In the meantime, on January 17, 1911, the Six Nations Council, replying to a communication from the Department, decided that the clergymen would be "dismissed as already decided by this Council" and that they should "now cease to act and to be members of the Six Nations School Board."[12]

On February 20, 1911, in response to further pressure, the Council "refused to reconsider the dismissal of the Clergymen from the School Board" and went ahead to approve and pass a set of "Amendments to the Regulations for the Management of the Six Nations Indian Schools." These spelled out that the schools "shall be governed by a School Board, consisting of five Indian members, to be chosen and appointed by the Six Nations Council; and the Indian Superintendent as representing the Department, who shall act as Chairman of the Board."[13]

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[11] Ibid.

[12] Ibid.

[13] Ibid.

In addition, and perhaps some other aspects of the problem were contained in these changes, it was decided that all white children attending Board schools should pay a minimum monthly fee of twenty-five cents "which may be increased at any time as may be deemed advisable by the Board."[14]

In any case, after the initial furore, nothing further was heard by the Six Nations Council from the Department for almost a year. Eventually, they requested some action be taken in January, 1912, regarding their resolutions. And because of the time lapse, they almost made it. For J. D. McLean, Secretary of the Department of Indian Affairs, wrote back to Superintendent Smith on February 5, 1912, saying:

> "Referring to the minutes of the adjourned meeting of the Six Nations Council, I beg to say that Resolutions 7, 6 and 18 are approved."[15]

But Superintendent Smith felt bound to query this casual approval of Resolution 7, which was the controversial "Amendments to the Regulations," and McLean had to write again on March 20, 1912:

> "... when departmental letter of February 5, last, was written Resolution No. 7... was inadverdently (sic) included with Resolutions Nos. 6 and 18. The Department has not yet given consideration to the question of the amended school regulations."[16]

On November 4, 1913, the Six Nations Council expressed their concern and frustration with the Department for refusing to confirm their suggested Amendments, and reiterated their hostility to the presence of clergymen on their School Board:

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[14] Ibid.

[15] Ibid.

[16] Ibid.

> "... we claim that they have no right to be on the School Board against our wishes."[17]

But the power of the Six Nations Council to move the Department from its stand was non-existent. On September 30, 1921, the Rev. J. L. Strong, representing the New England Company, eventually resigned from the School Board after serving on it for twenty-nine years, and on January 3, 1922, the minutes of the Council recorded, yet again, that they "decided to have the missioners (sic) withdrawn from the Six Nations School Board on the ground that they have no personal interest in the distribution of the Funds of the Six Nations."[18]

Later that year, on December 21, 1922, the other point raised in the 1911 "Amendments to the Regulations" was still of concern, for a motion was passed that text-books not be supplied to white or non-treaty Indians attending Six Nations Schools "as they do not contribute anything to the purchase of the books."[19]

Perhaps these attitudes can be better understood when the report of Russell T. Ferrier, Inspector of Indian schools, to McLean (May 12, 1922) is reviewed. It pointed out that there were eleven day schools on the reserve which were "managed jointly by the School Board and the Department of Indian Affairs" and that:

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[17] Public Archives of Canada, Records Group 10 (Red), Vol. 2010, File 7825-4.

[18] Public Archives of Canada, Records Group 10 (Red), Vol. 2011, File 7825-4A.

[19] Ibid.

> "Many Six Nations children, graduates from the day schools and the Mohawk Institute, are in attendance at high schools and colleges in Brantford and elsewhere. The Board gives roughly $5,000 per annum in connection with the expenses of these graduates, and the Department pays, in addition, a small amount ($200.00)."[20]

Two footnotes have to be added to these attempts by the Six Nations Council to exercise power in order to improve the status of their School Board. The first is that in 1926, suggested new "Regulations for the Management of the Six Nations Day Schools" were forwarded to the Six Nations Council for their consideration by the Department of Indian Affairs, to replace those approved 1906 regulations which were still in use. The first section of the proposed new regulations suggested that the Six Nations Schools be governed by the Department, "and a School Board consisting of six members - five Indians to be chosen by the Six Nations Council and the Indian Superintendent who shall act as Chairman."[21] No reply to this suggestion is recorded.

The second is contained in evidence given by a member of the Six Nations Council before the Special Joint Committee of the Senate and the House of Commons in 1951. In reply to questions by M.P. Mr. MacNicol, Mr. John Lickers pointed out that they had sixteen schools in operation on the

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[20] Ibid.

[21] Ibid.

Six Nations Reserve. The following exchange then took place:

> "Mr. MacNicol: I presume each school section has its own Board?
> Mr. Lickers: We have no School Boards at all.
> Mr. MacNicol: Who is in charge of the teachers?
> Mr. Lickers: That is entirely up to the departmental officials.
> Mr. MacNicol: The Six Nations Council has nothing whatever to say about that?
> Mr. Lickers: Nothing whatever."[22]

And later, in reply to a further query about trustees on Indian School Boards, Mr. Lickers replied: "It did not work out very satisfactorily. We did away with them some years ago."[23]

Status of the Indian Community, 1951-1963

The passage of the revised Indian Act of 1951 was considered by many as a significant step forward in the provision of education services to Indian youngsters. Certainly it opened the Federal doors to their participation in provincial systems of education. But little consideration seems to have been given to its original impact upon the Indian community.

Up to 1951, the legal status of the Indian community gave it some authority in the areas of (a) construction, maintenance, and repairs of schools (b) framing of rules and regulations for the operation of schools and the attendance of children between the ages of six and fifteen (c) inspection of schools attended by their children (d) the designation of the religious denomination of their teachers and (e) the establishment of separate schools on the reserves. This authority, with the exception of the last two items, was all swept away when the Royal Assent was given to the new Act.

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[22] Canada, Proceedings of the Special Joint Committee of the Senate and the House of Commons on the Indian Act, 1947 (Ottawa: King's Printer, 1947), p. 1066.

[23] Ibid., p. 1067.

The only jurisdiction left to the Indian community in respect is to be found in sections 121(2), which allows that when the majority of the members of an Indian Band are not members of the same religious denomination, they may call a meeting to decide upon what religious denomination the teacher of the school should be; and section 122, which gives the minority religious group in the Band the opportunity, if approved by the Governor in Council, to have a separate school.

There is no other direct legal status for the community in respect of educational matters. But there is, as has been noted previously, the opportunity for additional status to be secured through sections 69 and 83 of the Act, which allow for Bands to manage their own moneys and other affairs.

What was the practical effect in this reduction of status occasioned by the new Act? Initially, there was very little change in the situation.

It has been shown that the Indian Band Councils and School Boards gradually became ineffective and inoperative, in spite of the authority that was inherent in previous statutes, by reason of their inability to exercise any power they might have had. In the early 1950's, the concept of the uses of power and influence still seem to have been largely overlooked (or perhaps were but hazily understood) by the Indian community, for their involvement in the education of their children remained minimal.

However, it seems that the major intended effect of the new legislation (i.e. the greater involvement of Indian children in off-reserve educational situations) also began to create the realization in the Indian community that these developments were taking place with very little reference to themselves. Consequently, they began to press for more involvement in educational matters on the reserve through Band Council Resolutions and through their representatives on both the Regional and National Advisory Councils. As Howard Beebe, of the Blood Reserve in Southern Alberta, puts it: "We pushed and we pushed for School Committees through those Advisory Councils, and eventually they (the Department) came around to our way of thinking."[24]

School Committee Regulations - 1963

These efforts resulted in the issuance, in June, 1963, of Circular 453, "Instructions for the Organization of School Committees on Indian Reserves." While there were aspects of these regulations that did not sit well with many Indian communities, there were other aspects that were obviously designed to recreate, and, presumably, improve upon the status accorded to the Indian community under previous legislation.

Indian membership on School Committees was restricted to three persons nominated by the Band Council, and exclusive of Indian teachers employed by the Department. Meetings had to be attended by the Agency Superintendent or his Assistant, who would act as Treasurer to the Committee. The Indian School Superintendent could be in attendance at these meetings as an "educational consultant."

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[24] Statement by Howard Beebe during Education Committee Meeting, Blood Reserve, Alberta, April, 1970.

The functions and duties of the School Committee were outlined in some detail, and it is interesting to note what they included, bearing in mind the preamble to this section of the regulations which states that "all of the actions of the committee must be consistent with the Indian Act."[25]

The functions and duties were as follows:

> "The committee will assume active responsibility in the following areas:
> 1. School attendance and truancy.
> 2. Care of school property and school grounds.
> 3. Attendance of Indian pupils at non-Indian schools.
> 4. Use of school buildings for community activities.
> 5. Special disciplinary problems.
> 6. Band fund appropriations for school activities.
> 7. Scholarships from band funds.
> 8. Acquisition of sports and playground equipment.
> 9. Extra-curricular activities such as field days, school fairs and festivals, educational expeditions, etc."[26]

In addition to assuming such "active responsibility," the regulations went on to state:

> "The committee will be consulted and will act in an advisory capacity on the following matters:
> 1. School accommodation.
> 2. Annual school maintenance and repairs.
> 3. Day-to-day maintenance and care of the school - setting of janitorial duties. The committee may nominate the janitor. (Not applicable when the janitor is on Civil Service Establishment.)
> 4. Recommendations regarding educational assistance to students of the reserve.
> 5. Joint agreements with non-Indian schools.

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[25] Canada, "Instructions for the Organization of School Committees on Indian Reserves," Circular 453, issued by the Indian Affairs Branch, Department of Citizenship and Immigration, Ottawa, June, 1963, p. 1. (mimeographed)

[26] Ibid., p. 1.

6. Lunch supplies for the winter months and supplementary school supplies provided by the band.
7. School bus routes.
8. Reserve roads in relation to school bus routes."[27]

It is at this point that the development of an extra-legal status begins to be noticed - a trend that would become fully developed by January, 1973.

Status of the Indian Community, 1963-1973

From this point on, the status of the Indian community seems to have been determined by a combination of the gradual extension of the authority of the Band Councils and School Committees, as derived from the provisions of the Indian Act, and the exercise of power and influence, as defined at the beginning of this chapter.

Membership of the School Committees, for instance, was very seldom (after 1965) confined to that spelled out in the regulations. For one thing, these regulations were promulgated on the basis of one School Committee per Band but where a separate school was in operation on the reserve, two Committees were demanded and came into being. Eventually, the problems and the inadequacies of trying to operate two such Committees caused many reserves to amalgamate their separate Committees into one to serve the whole community, but doing so in a way that neither group would lose any of the status already secured. As a result, a considerable number of six member Committees came into being, without challenge or repercussion. This, in its turn, led to demands for five or seven member Committees on reserves that had equal numbers of students to cater to, even though there was no separation of buildings, by reason of religion, involved. This also was accepted without demur, and by 1968, three member Committees were very much the exception, not the rule.

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[27] Ibid., p. 2.

The presence and position of the Agency Superintendent or his Assistant as Treasurer to the School Committee soon became a contentious issue, with the result that their attendance at meetings was discontinued, and their role became purely that of merely monitoring from afar fiscal decisions of the Committee, in order to see that they did not contravene departmental (and Treasury Board) regulations. The on-going contact with the Agency or District Office was maintained through the person of the District School Superintendent.

Other aspects of their operations began to appear and grow. District School Committee meetings were started, which brought together on a bi- or tri-annual basis School Committee members from between six to ten Bands. Regional School Committee meetings developed from these District meetings, so that on an annual basis, all active School Committees in a Region (province) could meet with one another to discuss common problems, look for common solutions, and prepare joint resolutions and plans for action.

This increased status was reflected in Treasury Board Minute 703820, of March 23, 1971, which authorized the expenditure of approximately $150,000 on behalf of 215 School Committees to enable their members to attend both National as well as Regional Conferences, since it was acknowledged that "Indian School Committees have assumed greater responsibility for parts of the Educational Programme and have become more skilled not only in expressing the needs of the people they represent but also in suggesting ways that Indians and the Department can effectively meet those needs."[28]

Mention has been made previously of the issuance of other Treasury Board Minutes which have extended the authority of the Indian community over (a) the operation of daily school bus transportation, both on and off the reserve (T.B. 678269; April 16, 1968); (b) the management of kindergartens (T.B. 708442; November 25, 1971); (c) the development of the post-school programme (T.B. 710314; March 27, 1972); and (d) the complete control of the in-school programme (T.B. 715958; November 23, 1972). All these matters enhance the legal status of the Indian community. But in yet another direction, the extra-legal status of the Indian community has also been given a considerable boost.

This was emphasized when, on September 30, 1971, a new tuition agreement in respect of Indian children attending provincial schools in Manitoba was signed by representatives of the Government of Canada, the Government of Manitoba and the Manitoba Indian Brotherhood. Under section 114(1) of the Indian Act, the Minister may be authorized by the Governor in Council to enter into such Agreements. Similarly, under the Manitoba statutes the Minister of Youth and Education for the province is empowered to sign such accords. But there is no legal authority which requires that the Indian community or any of its representatives be involved in such a procedure.

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[28] Canada, Extract from Treasury Board Minute 703820, issued by the Treasury Board of Canada, Ottawa, March 23, 1971, p. 1. (mimeographed)

The fact that they were involved, and that in all probability neither of the senior governments would have entered into the Agreement in face of the active opposition of the Brotherhood, representing the Indian community of Manitoba, indicates just what degree of power and influence, of extra-legal status, the Indian community is now beginning to enjoy.

The Present Status of the Indian Community

The best available concise overview of the present status of the Indian community is that contained in the statement on Indian education delivered by the Minister of Indian Affairs in January, 1973.

In preparing the views which were contained in that statement, the Minister acknowledged the receipt of submissions from the Indian Association of Alberta, the Manitoba Indian Brotherhood, the Union of Ontario Indians, the United Association of Iroquois and Allied Indians, the Grand Council of Treaty No. 3, and the Yukon Native Brotherhood, as well as other types of input from the Union of B.C. Indian Chiefs, the Federation of Saskatchewan Indians, the Nova Scotia Indian Association, the Union of New Brunswick Indians, the Indian Association of Quebec, and various Indian education committees and associations. In addition, as he pointed out, he had visited "many Indian communities, held open forums in many different places and settings. Always education is a prime topic for discussion."[29]

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[29] The Hon. Jean Chretien, "Statement on the Policy Paper of the National Indian Brotherhood," speech delivered by the Minister of Indian Affairs, Ottawa, January, 1973, p. 2.

Working in partnership with the Indian and, where applicable, the Inuit people, the Minister pledged that his Department would begin "immediately to effect the educational changes for the Indian people that they have requested."[30] He indicated that the Department of Indian Affairs had "resumed management" of institutions previously operated by provincial governments and that "eventually, Indian people will be operating these schools (in Alberta and Saskatchewan) as well as others across the country."[31] The onus would be upon individual Band Councils and School Committees to decide "how far and how quickly" they wished to assume control. Training and research funds would be made available to facilitate such transfers of control.

In the area of integrated schooling, the Minister stated:

> "There will be no transfer of the Federal education programme to a provincial system without the clear consent of the Indian people who will be fully involved from the initial planning to the final signature of the tuition or Agreement; any provincial responsibility in Indian education will be derived from agreements between Band Councils, provincial authorities and the Federal government."[32]

Existing tuition agreements can also be renegotiated "at any time" with provincial School Boards, and the inclusion of special programmes to meet the educational needs of the Indian children will be supported by the Department. The development of those programmes is also seen as being part of the involvement process.

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[30] Ibid., p. 3.

[31] Ibid., p. 5.

[32] Ibid., p. 6.

The Indian community will also have the opportunity to develop Cultural and Educational Centres which they consider vital to the total educational programme for Indian people. At the same time, their control of the kindergarten programme, utilizing the normal funding resources of the Department, is also now a reality. Native language instruction is another aspect of the programme that the Indian people have stressed for many years, and which now is theirs to implement and develop, along with the training of personnel to conduct and supervise the programme.

Other parts of the Minister's statement dealt with the changing status of the Indian parent and the Indian child, and will be mentioned, therefore, more appropriately in the next two chapters.

In summary, then, the status achieved by the Indian community approximates much more closely than at any other time that of the non-Indian community in the area of the provision of educational services to their children. Band Councils and School Committees can (1) be responsible for the complete operation of schools on the reserves, including the planning, development, and maintenance of school facilities, the planning and development of curriculum, and the hiring and firing of staff; (2) be responsible for the development of adult education programmes on reserves, the management of the employment and relocation programme, and the provision for post-secondary educational needs; (3) assume complete control of all aspects of transportation programmes - daily and seasonal travel, vehicle maintenance, route determination and maintenance, etc; (4) operate kindergartens, student residences, and Educational and Cultural Centres; (5) negotiate new or revised terms with provincial governments or local School Boards for the education of Indian children; (6) be included as a legitimate and necessary signatory to any provincial or local agreement concluded between the Indian community and Federal and provincial governments; and (7) provide for counselling and assistance programmes to Indian youngsters.

There are still constraints upon the Indian community, of course. All of these undertakings must be carried out within the financial limits approved by the Treasury Board, although section 83 of the Indian Act does give the Band Councils the authority to raise additional revenue through the imposition of reserve taxes, if they so desire. The constitutional rights of religious minorities are still preserved. The age of compulsory attendance, and the penalties in respect of non-attendance, are not areas in which individual communities may expect to have jurisdiction. And while they may enter into joint federal-provincial-band agreements, they cannot enter into agreements with provincial governments (or local School Boards) which commit the Federal government to any obligation without the consent of that Government.

There is also one major area in which the Indian community, as represented by the individual Indian parent, has attained little legal or extra-legal status. This is the area of representation on provincial School Boards. Since such representation does devolve upon the individual parent, it will be dealt with in the next chapter.

With that exception, the status of the Indian community is now such that it seems to be able to enjoy basically the same degree of participation in the education of its children as the non-Indian community enjoys in the education of their youngsters.

And this is something which could not have been maintained at any previous point in the history of public education in Canada, whether that point be placed one hundred, fifty, twenty, or five years ago, or even within the last twelve months.

CHAPTER IX

THE STATUS OF THE INDIAN PARENT IN EDUCATIONAL MATTERS

It is an accepted proposition in Common Law that the parent has the right to determine in what manner his child shall be educated. Parental challenges to statutes which tend to abrogate that right have been upheld in both British and Canadian courts, as have challenges to procedures arising out of such statutes. However, with one single exception, which will be discussed in more detail later, those challenges have been by non-Indian parents and have been aimed at, in the main in Canada, provincial statutes providing for the education of non-Indian pupils. Would this proposition, then, have equal validity in the case of the Indian parent?

Legal Rights of Parents Generally

There are two decisions which would seem to point in the appropriate direction. In the case of Buchner v. Sutton (1965), the judgement handed down in the Supreme Court of Ontario read, in part:

> "However, I do think it is important to remember that the schools are merely the agents of the parent; the parent has the prime right of the bringing up and the instruction of the child, having the right to say how that child shall be educated and the schools are merely the agents of the parent.
> It appears to me... that sometime educators forget this fact and establish education as a right of its own and their own private area in which they are all powerful."[1]

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[1] F. G. Carter, "Adoption, Guardianship, Education and Religious Training of Children," Western Law Review, 1965-6, p. 166.

The relativity of the second case, that of Agor-Ellis v. Lasselles (1883), heard before an English Court of Appeal, would depend upon the interpretation of the concept of 'wardship'. The decision handed down stated:

> "A father has a legal right to control or to direct the education and the upbringing of his children until they attain the age of twenty-one years, even though they are wards of Court."[2]

Indians as "Wards of the Federal Government"

Traditionally, Indian people have been referred to as "wards of the Federal Government." Whether there was ever any real sense of wardship involved, as there is when a person is made a ward of the Court, or whether this term was used (particularly by provincial governments) in order to explain the proprietary relationship between the Minister responsible for Indian affairs and Indian people, both collectively and individually, seems not to have been determined. Presumably, then, only the latter case applied, for certainly the present Act still spells out relationships in respect of the constitution of new Indian bands,[3] control of reserve lands,[4] disposition of the property of deceased Indians,[5] and jurisdiction over the property of mentally incompetent Indians,[6] and infant children of

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[2] Quoted in "Rights of Indian Peoples in Education," position paper prepared for the Federation of Saskatchewan Indians, May, 1972, p. 14. (mimeographed)

[3] Canada, R.S., c. 149, s. 17.

[4] Ibid., s. 18.

[5] Ibid., ss. 42, 43, 44, 45, 46, 47 and 48.

[6] Ibid., s. 51.

Indians.[7]

Differing Views on Rights of Indian Parents

But even if the Indian people *were* legally wards of the Crown, or the Federal government in the name of the Crown, the 1883 judgement would, combined with *Buchner* v. *Sutton* decision, reinforce the view that Indian parents have the "prime right" to say how their children should be educated. This right was emphasized in the policy paper of the National Indian Brotherhood, when it stated:

> "If we are to avoid the conflict of values which in the past has led to withdrawal and failure, Indian parents must have control of education with the responsibility of setting goals. What we want for our children can be summarized very briefly -
> ... to reinforce their Indian identity,
> ... to provide the training necessary to make a good living in modern society.
> We are the best judges of the kind of school programmes which can contribute to these goals without causing damage to the child.
> We must, therefore, reclaim our right to direct the education of our children."[8]

The Watson Report, however, apart from advocating that no transfers of Indian educational programmes to provincial governments or local School Boards should take place "without the express and clear approval of the majority of the parents in each community concerned"[9] and that "consideration should be given to making resources available for the specific purpose of encouraging parental involvement in education,"[10] was not prepared to commit itself to the paramountcy of Indian parents rights over the education of their children. And in the Minister of Indian Affairs' statement of January, 1973, while pledging his own and his Department's full support to realizing the educational goals for the Indian people which are set forth in the Brotherhood's proposal[11] also stops short of this type of recognition, contenting himself with:

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[7] Ibid., s. 52.

[8] National Indian Brotherhood, *Indian Control of Indian Education* (Ottawa: Mail-o-Matic Printing Co. Ltd., 1972), p. 3.

[9] Canada, *Proceedings and Evidence of the Standing Committee on Indian Affairs and Northern Development, June 22, 1971* (Ottawa: Queen's Printer, 1971), p. 5.

> "We want to see native people making their own decisions and becoming fully involved in education. I know that when parents are closely and deeply involved with schools, the children get more support for their educational endeavors"[12]

and

> "the Department will do everything possible to involve native people in school management and administration."[13]

Past Treatment of Indian Parents

In the matter of the education of their children, the Indian parents have always been at a disadvantage. Immigrant parents came to this country with some background (developed to a greater degree in later years, of course) of a formal system of schooling for children. Correspondingly, as the system began to be expanded into a universal, publicly supported, compulsory institution, it was relatively easy for them to accept both the system, its intent, and its legal strictures.

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[10] Ibid., p. 14.

[11] The Hon. Jean Chretien, "Statement on the Policy Paper of the National Indian Brotherhood," speech delivered by the Minister of Indian Affairs in Ottawa, January, 1973, p. 3.

[12] Ibid., p. 2.

[13] Ibid., p. 5.

For the Indian parent, it was not so easy. Traditionally, education of children was a family affair, shared between the grandparents, with their parables and their knowledge of tribal history and social customs, and the parents, with their skills for the hunt, for war, for games, and for the tending of the lodge. The white man's concept of education, which disparaged both the content and the methods of traditional Indian learning and substituted in its place a foreign tongue, a foreign religion, and an emphasis upon physical punishment and the separation of parent and child, was accepted with reluctance, and often under legal or physical duress, even though the ends of education were still valued.

The physical duress to which they were subjected in order to 'encourage' them to send their children to school was even transmitted through the Indian School Boards which were formed on some reserves. This was particularly the case in the early 1890's, before universal compulsory education for Indian children became enshrined in the "Amendments to the Indian Act" of 1894.

On May 19, 1891, Hayter Reed, Indian Commissioner for the Northwest Territories, sent a circular letter to Indian Agents, stating:

> "The Department considers it advisable that Chiefs in Council... frame rules and regulations under sub-section g of Section 76 of the Indian Act (or sub-section g of Section 10 of the Indian Advancement Act, where it has been applied), to compel the attendance at day, boarding

> or industrial schools, of children between the ages of 6 and 15 years.
> On one or two Reservations a Board of Education has been established, and found to work well. If this be thought the best course to adopt, and regulations might be passed for its appointment by the Chiefs in Council or for the elections of individuals to compose it... It might be advisable to point out to the Indians that white men have laws compelling the sending of children to school."[14]

R. S. McKenzie, Indian Agent for the Duck Lake Agency, in a letter of reply to Reed on October 15, 1891, outlined the rules that had been passed by the Indian School Board that day. They called upon Indian trustees to visit the schools, and to examine for reasons for the non-attendance of Indian children, and "... if they are not satisfied (a trustee) shall at once consult the remaining trustees and if they think proper, report the same to the resident Farmer, with a request that the rations be stopped until the said child or children shall attend school in a more satisfactory."[15]

Another Agent, J. Finlayson (Agency not indicated) also wrote to Reed (August 26, 1891) indicating that the Indian school trustees in his area, in cases of truancy or non-attendance without sufficient excuse, were "to warn the parents of the children, and on third repetition of such offense the trustee shall report the case to the Agent with the request that the rations of such families shall be stopped."[16]

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[14] Public Archives of Canada, Records Group 10 (Red), Vol. 2552, File 112220.

[15] Ibid.

[16] Ibid.

On other reserves that year, such as the Saddle Lake and Whitefish Lake Reserves, the local "Boards of Education" empowered themselves to "inflict a fine" for non-attendance in excess of ten consecutive days or five days in any one month,[17] while the Cape Croker Band on the Saugeen Reserve, prescribed school attendance as being at least 100 days a year, and, in cases of non-attendance, stipulated "a fine of $10.00 for each offense from annuities."[18] These latter practices[19] following the pattern reported in 1880 by John Beathe, the Indian Agent at Highgate, who wrote to the Superintendent General:

> "The Chief and Council has made an effort to have a better attendance at school by passing a bylaw in Council of the whole Band fineing all delinquents who do not send their children to school at least six months in the year."[20]

Regulations of 1894

As has been indicated previously, while Band Councils retained their power to make such regulations, the "Amendments to the Indian Act" of 1894 also authorized the Governor in Council to regulate certain conditions of compulsory attendance, and this authority was exercised on November 10 of that year.

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[17] Ibid.

[18] Public Archives of Canada, Records Group 10 (Red), Vol. 2569, File 115890.

[19] David Laird, Indian Commissioner for the Northwest Territories, disagreed with the practice of fines being levied from annuity moneys. In a letter to the Secretary of the Department of Indian Affairs, dated March 13, 1901, he noted: "Interest or annuity money is regarded in too sacred a light by the Indians as a treaty obligation to be withheld for neglect to send children to school."

[20] Public Archives of Canada, Records Group 10 (Red), Vol. 2125, File 24101.

All children between the ages of 7 and 16 were obliged to attend a day school "on the reserve on which they reside" for the full term during which that school was open each year. Certain excuses from attendance, including being "under sufficient instruction," were acceptable, but in cases of truancy, parents were liable to a fine, upon summary conviction, of $2.00 or imprisonment of up to ten days, or both.[21]

Over and above the sanction, however, the regulations gave sweeping powers to the local Indian Agent to insure that Indian parents were compelled to abide by them or lose control of their children. Section 9 of the regulations stated:

> "An Indian Agent or Justice of the Peace, on being satisfied that any Indian child between 6 and 16 years of age is not being properly cared for or educated, and that the parent, guardian or other person having the charge or control of such child, is unfit or unwilling to provide for the child's education, may issue a warrant authorizing the person named therein to search for and take such child and place it in an industrial or boarding school, in which there may be a vacancy for such child, and a child so placed in an industrial or boarding school may be retained until the age of 18 years is reached."[22]

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[21] When this penalty is compared with that imposed by the local Indian School Board (e.g. that on the Saugeen Reserve), it emphasizes the point made in Chapter 5 that the legislation of the day permitted such a discrepancy to occur.

[22] Public Archives of Canada, Records Group 10 (Red), Vol. 2552, File 112,220.

The interpretation of this regulation was given an interesting slant by Frank Pedley, Deputy Superintendent General of Indian Affairs, when he stated in a letter written March 21, 1908, to the Secretary of the Joint Committee of Methodist, Presbyterian, and Anglican Churches:

> "The question of compulsory education will receive at once full consideration... regulations governing the education of Indian children were passed by His Excellency in Council on November 10, 1894. These regulations are still in force and go as far as was deemed advisable, as it was not considered that attendance at boarding or industrial schools should be made compulsory, and that no rule should be adopted which would provide for the arbitrary separation of parents and children."[23]

The Case of the Cameron Children, 1903

Whether Mr. Pedley was being influenced by the fact that the regulations of 1894, in spite of Section 9, were designated as applying only to day schools; or whether he considered that four days notice of appeal against the action spelled out in Section 9, a procedure denied to Indian parents in the Northwest Territories, was sufficient to claim that there was no "arbitrary separation" of Indian parent and child; or whether he was influenced by a challenge to those regulations which occurred in 1903, it is not possible to say. But certainly, the 1903 situation[24] did cause some reevaluation of the procedural system by officials of the Department of Indian Affairs.

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[23] Public Archives of Canada, Records Group 10 (Red), Vol. 6001, File 1-1-2.

[24] The only reference to this case is found in a memorandum, dated September 25, 1903, to the Deputy Superintendent General from Martin Benson, Assistant Secretary of the Department. Efforts to locate the judgement handed down by Judge Richards, both through the University of Manitoba Law Library and the records of the Court of Queen's Bench in Winnipeg, have been unsuccessful. The Department of Indian Affairs in Ottawa has no knowledge of the case and the pertinent file on the Rupert's Land School is listed in the Public Archives as "missing."

Section 12 of the regulations of 1894 had authorized an Indian Agent or a Justice of the Peace to issue a warrant to search for children, "placed under these regulations in an industrial or boarding school," who had escaped from these institution, and "any employee of the Indian Department" was empowered "to arrest without a warrant any child found in the act escaping from an industrial or boarding school, and to convey such child to the school from which it had escaped."[25] Sometime in 1903, the children of William Cameron, having "deserted" from the Rupert's Land School (located six to seven miles from Winnipeg), were taken back to the institution under a warrant issued in respect of the above-mentioned regulations. But Mr. Cameron was apparently incensed enough at such treatment that he applied to Judge Richards of the Manitoba Court of Queen's Bench for a writ of Habeas Corpus in respect of the children. The Judge granted the writ, noting that:

> "The regulations for the detention of children until they reach the age of 18 years do not apply to children who have been voluntarily placed in the school and that to such children the parents have a right to get them out of the school at any time they wish to demand them."[26]
> (underlining added)

Even without the complete judgement at hand, the implication of case stands out clearly. Not all Indian children in attendance at industrial or boarding schools were there by reason of warrant or other type of compulsory placement, but all were subject to the regulations established for the operation of such schools as if they had been thus committed. This meant that since these schools were considered as types of reformatory or correctional schools, all children in these schools were treated as delinquents or juvenile offenders, and their parents were classified accordingly.

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[25] Public Archives of Canada, Records Group 10 (Red), Vol. 6001, File 1-1-2.

[26] Public Archives of Canada, Records Group 10 (Red), Vol. 2552, File 112220-1.

That the desire of the parent to withdraw his child or children from such schools, having placed them there voluntarily, was an anathema in the eyes of even senior Departmental officials is borne out by the comment of J. A. J. McKenna, Assistant Indian Commissioner of the Northwest Territories when, in a June 8, 1903, letter to the Secretary of the Department of Indian Affairs he stated:

> "The Principal of the Boarding School at Norway House experiences great difficulty in retaining children at school. The Indians through mere caprice insist on taking their children away at all seasons. I find that the school is not mentioned in section 8 of the Regulations and that therefore the Principal has no authority to retain the pupils. His hands would be strengthened if it were known that he had a legal right to keep children in school. I would therefore recommend that the section be amended by adding the name of the school."[27] (underlining added)

Martin Benson, however, in commenting on both this recommendation and on Judge Richards' decision, had to point out:

> "The adding of the Norway House School and other schools since established to section 8 of the regulations would not confer a right to retain

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[27] Ibid.

> pupils admitted with the voluntary consent of the parents if the parents afterwards wished to remove them.
> Section 138 only provides for the establishment of Industrial or Boarding Schools and the committal of children to such schools and were the regulations to acknowledge further than this they would be ultra vires."[28]

His solution to the problem was typical, as has been shown in other instances, of the reaction of Departmental officials when faced with situations of this nature:

> "The only way apparently to overcome the difficulty would be to frame a form of agreement to be signed by the parents by which he or she waved (sic) any right to the custody of the child until it reaches the age of 18 years."[29]

The concern was to have children in schools, not to be cognizant of parental rights.

The Case of Jesse Debo, 1906

During April and June of 1903, some of the barns and buildings of the Mohawk Institute on the Six Nations Reserve were destroyed in a series of fires. Subsequent investigations led to the arraignment of four Indian students at the Institute before the local magistrate on a charge of incendiarism.[30] Three of them were sentenced to the Mimico

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[28] Ibid.

[29] Ibid.

[30] Martin Benson, in commenting on the case to the Deputy Superintendent General, noted: "Even an Indian will not set fire to buildings, destroy valuable property and endanger life from pure cussedness. There must have been some real or imaginary grievance which led some of the boys to commit incendiarism and these grievances, as well as the perpetrators of the crime, should be discovered."

Industrial School, and one to the Kingston Penitentiary. One of the boys committed to Mimico was Jesse Debo, who was sentenced to three years on July 20, 1903.

As the end of that sentence approached, his father, Matthew Debo, had apparently been in touch with the Department concerning the boy for a letter (May 1, 1906) from Secretary McLean to him stated:

> "In reference to your letter of the seventh ult. asking assistance from the Department to obtain the release of your son, Jesse Debo, from the Mimico Industrial School, I beg to say that upon inquiry I find that your son was committed to that institution for three years and that his sentence will expire on July 19, next.
> You will have your son with you immediately after the expiration of his sentence, and you may look for him about July 21, next."[31]

But on August 7, a letter was addressed to Mr. R. Ashton, the Principal of the Mohawk Institute, asking if he knew what had happened to the boy, since the time for his release had passed and his father had neither seen nor heard anything of him. Ashton replied (August 17, 1906):

> "... I beg to say that on receipt of your letter I wrote to the Superintendent of the Mimico Industrial School for information but have received no reply. I understand that the boy absconded from Mimico through inquiries of the Brantford Police for him."[32]

However, on that same day, Mr. C. Ferrier, Superintendent of the Victoria Industrial School for Boys at Mimico, Ontario, (the Mimico Industrial

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[31] Public Archives of Canada, Records Group 10 (Red), Vol. 2771, File 154845.

[32] Ibid.

School) wrote to Ashton, stating:

> "The boy, Jesse Debo, committed to this school about three years ago, is working with a gentleman not far from here. The boy was extremely anxious to take the position and I presume it would be in his best interest to allow him to continue where he is. He has easy work and is receiving good wages. I think his father should not be allowed to interfere at all with the boy."[33]

Unfortunately, further correspondence on this case is not available, and so the outcome of this attempt to interfere with the parental rights of Matthew Debo in respect of his son is not known. That such an attempt was made, however, is sufficient to indicate that, with every good intention, the infringement of parental rights was considered to be a legitimate practice.

Parental Rights and Religious Pressures

References have already been made to the competition between the churches for the opportunity to be responsible for the education of Indian children. This, of course, resulted in pressure being brought to bear on the Indian parent in order to see that he sent his children to the 'right' school (i.e. the school run under the auspices of his registered Christian faith), irrespective of whether he wished his children to be in residence there or not. And since there were invariably considerable distances involved in getting children to school, the Indian people naturally tended to place their children as near to home as possible, without great concern for the denominational nature of the school.

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[33] Ibid.

This problem was particularly acute during the 1880's and 1890's in what is now Saskatchewan. In particular, the squabbling over the enrolment of which children in which school was a highlight of the administration of the Presbyterian School at Round Lake, under the Rev. McKay, and the Qu'Appelle Industrial School, where the Rev. Father Hugonnard was principal.

Getting involved in the fray were the parish priests, and the following extracts from a letter sent by Hayter Reed, then Assistant Indian Commissioner of the Northwest Territories to the Superintendent General of Indian Affairs on February 10, 1888, adequately outlines the religious pressures to which Indian parents were subjected:

> "Father Campeau (parish priest in the Crooked Lakes Agency) says: - "I then warned the other Catholics of your Reserves, and out of your Reserves, to withdraw their children from Mr. McKay's school. Amongst others, I warned Alex Favel's wife to take away her child from this school before her departure for Pasquah's Reserve... she wished to set out soon, and take her child with her. This is why I sent to seek him... In acting thus, our Catholics have not been to blame, for they have only fulfilled their duty, and the advice of their Priests. I also warned Mr. Belanger to withdraw all his children from Mr. McKay... I told him that his duty as a Catholic was to take them away from this school, and that my duty as a Priest, was to compel to do so as soon as possible. And I do not believe, in thus speaking, I fail in my obligations towards you. For I have simply done my duty in so acting... I have not only strongly advised, but even ordered all my Catholics on your Reserves or out of them, to withdraw their children from the minister, Mr. McKay. And yet at the same time, in so doing, I have not been to blame, for I have merely done my duty. Indeed, being our Catholics they are to be praised for acting thus, for they did but follow their Priests."[34]

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[34] Public Archives of Canada, Records Group 10 (Red), Vol. 3792, File 45905.

It was the effects of these sorts of pressures which led Harold Cardinal to write:

> "In addition to turning pious little Christians of their own sect, and there was fierce competition among the sects for bodies which might presumably be turned into souls, the schools served the purpose of keeping the parents under the influence of the church concerned."[35]

The Present Status of the Indian Parent

Having seen how the rights of the Indian parents were viewed and dealt with in the past, the question remains - what is the status of the Indian parent with respect to the education of his children at the present time?

The legal status of Indian parents is prescribed by the appropriate sections of the Indian Act. While the Minister has the power to designate which school an Indian child shall attend, the parent does have the right to alter that designation upon written application, but only on the basis of the crossing of religious lines.[36] The parent may keep the child out of school, or at least the school of the Minister's designation, by assuring the Minister that the child is "under efficient instruction at home or elsewhere."[37] If the parent can persuade other like minded parents to act in concert, he may determine of what religious denomination the teacher of his child shall be[38] and may also seek the establishment of a separate school on his reserve. The parent on the reserve may also seek a seat on the School Committee serving his child's school, although this status could be argued as being nearly extra-legal, since School Committees are authorized under subordinate legislation that appears to have stretched the provisions of the Act very considerably. And, presumably, the Indian Act notwithstanding, he has the same rights as other parents to determine the nature of education that his child will receive.

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[35] Harold Cardinal, The Unjust Society (Edmonton, Alberta: M. A. Hurtig Ltd., 1969), pp. 53-54.

[36] Canada, R.S., c. 149, s. 118.

[37] Ibid., s. 117(c).

Status off the Reserve

Indian parents living off the reserve may find their status less easy to determine. If they have but recently moved away from the reserve, they may find themselves deprived, on the one hand, of the exercise of those legal prerogatives outlined above while, on the other hand, they gain no equivalent or improved status, for they are not yet considered as "residents" of the provincial school district in which they now reside.[39] (One benefit of their former reserve status does pertain, albeit illegally; they may apply for, and be granted, educational assistance for their children in attendance at provincial schools.)

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[38] Ibid., s. 121.

[39] A circular letter, sent on November 10, 1965, by the Deputy Minister of Education for Alberta, Dr. W. H. Swift, to all School Districts, Divisions and Counties, read in part: "It is our view that if a registered Indian family resides in an organized district, then the children of such a family may be counted by a school authority for grant purposes... The Province accepts the above costs because the Indian family is living on property which contributes to the support of the Foundation Programme." A later letter issued by Dr. L. Hall, Director of School Administration, emphasized that 12 months was the period needed to establish such residency.

This living in "no man's land" - being considered neither a resident of the reserve nor a resident of the school district in which they now live - creates some legal conundrums. In the case of the truancy of his children, under which statute should an Indian parent be brought before a magistrate - the Indian Act, or the appropriate provincial statute? If hailed before the Bench under the Indian Act, he would be liable, upon summary conviction, of a fine of $10.00, or of imprisonment up to ten days, or both. If, however, he were charged, for example, in Alberta under the School Act,[40] then for a first offense the penalty would be a $100.00 fine, for the second it would be $250.00, and if convicted a third time, he would be facing a fine of $500.00 or up to sixty days in jail.[41]

While no such case, as far as can be determined, has been brought before the courts, it seems likely that it would be held that an Indian parent should be charged under the provincial statute, since this is legislation of general application, even though the Indian Act does legislate in this same area. In the Ontario case of Rex v. Martin (1917), it was maintained that an unenfranchised Indian is subject to provincial legislation in the same way as a non-Indian, at least where he is out of the reserve. The Martin case was specifically concerned with a liquor offense, but in handing down his decision, Mr. Justice Riddell, paraphrasing Lloyd Watson in *C.P.R.* v. *Notre Dame de Bonsecours* (1899), noted:

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[40] Alberta, R.S.A. (1970), c. 329, s. 171.

[41] Since each province is responsible for the administration of education within its boundaries, retribution demanded of parents in cases of truancy on the part of their children varies across the country.

> "The British North America Act whilst it gives the legislative control of the Indian defendant *qua* Indian to the Parliament of the Dominion, does not declare that the defendant shall cease to be a denizen of the Province in which he may be, or that he shall, in other respects, be exempted from the jurisdiction of the provincial legislatures."

Had the Indian parent been living off the reserve for more than a year, and had therefore become a recognized *bona fide* resident of the school district, then this type of jurisdictional problem which might confront an educational administrator, would not arise. It is when the legal status of the Indian parent is put into question by his being caught up in such a transition between societies that these situations emerge.

Representation on Provincial School Boards

The one aspect of the status of the Indian parent which is, to many, of greatest concern, is that of representation on the body which administers the school which his child attends.

On the reserve, he is eligible to run for elective office on the School Committee either directly, or via membership of the Band Council, depending upon the procedure agreed upon by his Band. As a *bona fide* resident of a school district, he would normally be eligible to seek a seat on a local School Board operating under provincial jurisdication. But, as a reserve resident, with his children attending a provincial school, the normal avenues open to other citizens seeking such representation are often closed to him.

In British Columbia, an Indian parent may register on the voters' list of the district in which his reserve is located, which would then insure that he is both able to vote for, and run as, a trustee on the local School Board.[42] If successful in his attempt, he would sit as a regular Board member with full voting rights.

In Saskatchewan,[43] Indian reserves are permitted to form themselves into a School District and thus become part of a School Unit. This enables the Indian parent on the reserve to be registered as a "rate payer" and thus become eligible to both vote and run for local trustee on the provincial Unit Board. (Since the Federal government continues to pay a per capita fee for the attendance of his children in the provincial school, the classification of "rate payer" does not affect his exemption from the provincial school tax levy.)

The appropriate legislation in Manitoba also enables a reserve community, if it so wishes, to become an elective ward of the School Division adjacent to the reserve and thus grants the Indian parent the right to be elected as a representative of his community to serve, with full power and authority, on the expanded Board of that Division.[44] It must be noted that this arrangement gives the Indian parent, elected as a school trustee, special status on the Board, in that his position on it is extra to its regular complement of trustees.

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[42] British Columbia, R.S.B.C. (1960), c. 319, s. 66.

[43] Saskatchewan, S.S. (1968), c. 66, s. 2(n)(vi).

[44] Manitoba, R.S.M., c. 51, s. 444A(4).

The situation in Ontario is much more conditional. The Schools Administration Act[45] makes provision whereby School Boards may appoint an Indian representative, nominated by the Band Council, to be a member of the Board. If so appointed, then the Indian trustee would have all the powers and duties of a member of the Board, as if he had been elected in the normal manner. But it is dependant upon the reserve community to make the request for such representation, and it is entirely up to the membership of the elected provincial Board as to whether they grant such a request.

When the measure first received Royal Assent (June 15, 1967), a number of Boards moved to accept Indian representatives. With the administrative reorganizational changes brought about in 1969, which saw the creation of fewer but larger Boards, the acceptance of such represenatives had to begin over again, and the larger Boards, perhaps because they felt more removed from the local impact of the reserves, were less willing to accede to requests from the various Indian communities for representation among them. One Board, that of Kent County, rejected the Indians' petition in March, 1970, for the seating of an Indian representative, by a vote of 9 to 7. Much bitterness on the part of the Indian parent was generated by this, and similar, decisions. As a result, "both Indian and non-Indians have tended to reject the idea of the appointment of Indians as trustees, since the exclusion of Indians as elected trustees confers a different and lower status on Indian persons."[46] In New Brunswick, School Boards are composed of trustees both elected at large and appointed by the Lieutenant-Governor in Council.[47] As a result, some representatives of the Indian parents have been appointed to serve on various School Boards of the province.

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[45] Ontario, R.S.O., c. 424, s. 35(c)(3).

Neither Nova Scotia, Prince Edward Island, Alberta, or the province of Quebec have, as yet, passed legislation which would permit of Indian parents being represented on provincial School Boards, although the situation in Alberta is of some interest.

Rejection of Provincial Representation in Alberta

At the Annual General Meeting of the Indian Association of Alberta, held at Morley, June 29 and 30, 1967, the following resolution was duly moved and carried:

> "No. 28. BE IT RESOLVED that every local School Board have an Indian representative on their School Board as an official spokesman, not only as an observer."[48]

On July 27 and 28, 1967, the Catholic Indian League of Alberta, at their Annual Convention at Hobbema, passed a lengthy resolution which included the following sections:

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[46] Indian Association of Alberta, "Proposals for the Future Education of Treaty Indians in Alberta," a brief presented to the Commission on Educational Planning for the Province of Alberta, January, 1971, p. 120.

[47] New Brunswick, R.S.N.B. (1966), c. 16, s. 17.

[48] E. R. Daniels and J. W. Chalmers, "Alberta's Separated Citizenry," position papers presented at the Alberta School Trustees' Association Annual Convention, Edmonton, Alberta, November, 1967, p. 4.

> "No. 2. Where an Indian reservation is of a size comparable to that of the existing school division or county of the province, that the reservation itself shall be constituted a school division or county for school purposes;
> No. 3. Where an Indian reservation is too small to be a school division or county of its own, the Indian people shall become the electors of the school division into which their reservation is integrated, with the right to hold office as school trustees."[49]

During the first National Indian School Committees Conference in Edmonton, Alberta, in March, 1968, similar resolutions were passed and were presented by a Conference delegation to the then Minister of Education of the province, the Hon. R. Reierson. As a result of these representations, promise of the necessary legislation was made in the Speech from the Throne at the opening of the Alberta Legislature in 1969, and some suggested amendments to the School Act were presented to Indian School Committees, although not to the House. These suggestions were rejected by the Indian Association of Alberta as being inadequate to the requirements of the Indian parents.

In 1970, the proposed major revision of the School Act contained the following section:

> "17 (1) The Minister, after consultation with Indian representatives and any Board concerned may approve an agreement between a Board and Indian representatives whereby
> (a) Indians are represented on the Board in addition to other trustees,
> (b) the functions, duties and liabilities (if any) of the Indian representatives referred to in clause (a) are specified,

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[49] Ibid., p. 5.

> (c) provision is made for
>   (i) the length of the agreement
>   (ii) the term of office of any representative
>   (iii) the qualifications and manner of appointment or election of the representative
>   (iv) transportation and schooling of Indian children
>   (v) financial arrangements
>   (vi) any other matter to facilitate the education of Indian children.
>
> (2) No agreement under subsection (1) may be made, amended or terminated without the prior approval of the Minister."

In a letter dated February 24, 1970, from Harold Cardinal, President of the Indian Association of Alberta, to the Hon. Robert Clark, Minister of Education, the position of the Association to this proposed section of the legislation was made quite clear:

> "We hold absolute objection to this complete section. Our attitude is that passing of this section would permit new, advanced involvement between Indian reserve representatives and provincial educational jurisdictions at a time when we as treaty Indians have not yet had our legal status and educational rights reconfirmed by the Government of Canada."[50]

Summary

In the previous chapter, it was stated that the present status of the Indian community would seem to indicate that the exercise of its legal rights was supplemented and enhanced by the shaping of extra-legal authority, obtained by the use of power and influence. In the case of the Indian parent on the reserve, his status in respect of the education of his children seems to be not only more restricted to that which is legally prescribed under the terms of the Indian Act, but even that aspect of it to which he might aspire under Common Law is as yet imperfectly developed. As the 1967 study on Indians and the Law pointed out:

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[50] Extract from correspondence between Harold Cardinal, President, Indian Association of Alberta, and the Hon. Robert Clark, Minister of Education for the Province of Alberta, February 24, 1970, p. 5.

> "The legal rights of parents concerning their own children appeared to be regarded too casually by the Indian Affairs Branch and by other agencies."[51]

On the other hand, when the Indian parent moves off, and resides continuously away from, the reserve, his status appears to be enhanced by reason of his acquiring an additional status under provincial legislation while retaining certain benefits of his Indian status, even though some of these, as the Indian Act currently stands, he may be receiving illegally.

The position of the Indian parent on the reserve, attempting to seek representation on provincial School Boards, would indicate that any additional status he might acquire through the use of his power and influence is limited. And yet, as has been shown in the case where the Indian Association of Alberta was able to halt provincial attempts to extend the school franchise, the results of such an exercise of power and influence can be demonstrated in negative, as well as in positive, terms.

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[51] Canadian Corrections Association, Indians and the Law (Ottawa: the Canadian Welfare Council, 1967), p. 18.

CHAPTER X

THE STATUS OF THE INDIAN CHILD IN EDUCATIONAL MATTERS

The status of the Indian child in respect of educational matters seems to devolve upon the factors of (a) what is required of him under the Indian Act, (b) what sanctions he is subject to under that Act, and (c) what benefits he may expect to receive under the provision of the Act. In addition, if they are not already provided for in the terms of the Indian Act, his status will be determined by those concepts of Common Law which pertain to all children, both Indian and non-Indian alike.

Requirements under the Indian Act

What is required of the Indian pupil under the terms of the current Indian Act? Basically, that if he is between seven and sixteen years of age, he must be in regular attendance[1] at a school designated by the Minister.[2] If the pupil turns sixteen during the school term, he must continue in attendance until the end of that term[3] and he may be required by the Minister to continue in attendance until he becomes eighteen.[4] Beyond that age, no educational compulsion is possible under the Act.

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[1] Canada, R.S., c. 149, s. 116.

[2] Ibid., s. 118.

[3] Ibid., s. 116(2)(b).

[4] Ibid., s. 116(2)(c).

In addition, a younger child, if he is six years of age, may be required to attend school,[5] but no general compulsion can be applied. In certain local circumstances, kindergarten services may be provided for Indian children as young as three years of age, but attendance at such centres would be purely voluntary.

Even so, for the child of compulsory school age, there are circumstances in which he is not required to attend school in the normal fashion.[6] In cases of sickness, of course, or if he excused in writing by the Superintendent for purposes of "assisting in husbandry" (or, in the case of a girl, for "urgent and necessary household duties"), he may legitimately be out of school. Similarly, if he is "under efficient instruction at home or elsewhere," or if there is insufficient accommodation at the school he is designated to attend, then he may be legally excused regular school attendance.

Sanctions under the Indian Act

If the pupil is not excused from school attendance, however, and indulges in truancy, what is then his status? In the first place, if a regularly appointed truant officer has "reasonable grounds" to believe that a child is "absent from school contrary to this Act," then the pupil may find himself being taken back to school, with the truant officer "using as much force as the circumstances require."[7]

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[5] Ibid., s. 116(2)(9).

[6] Ibid., s. 117.

[7] Ibid., s. 119(6).

Secondly, the pupil may not even have to be absent in order to find himself subject to the sanctions of the Act. Any child who is "habitually late for school shall be deemed to be absent from school"[8] (underlining added). There is no option involved here, no discretionary powers to be exercised (although the precise definition of what constitutes both "lateness" and "habitual lateness" may pose some problems); a child could be in what would otherwise be considered regular attendance, but could still be held to be absent from school.

If this were the case, what sanctions would he then incur? The Act states:

> "An Indian child who
> (a) is expelled or suspended from school, or
> (b) refuses or fails to attend school regularly,
> shall be deemed to be a juvenile delinquent within the meaning of the Juvenile Delinquents Act."[9]

Thus, an Indian child, considered to be "habitually late" for school, could find himself in the following category:

> "juvenile delinquent means any child who violates any provision of the Criminal Code or of any Dominion or provincial statute, or of any by-law or ordinance or any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute."[10]

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[8] Ibid., s. 119(5).

[9] Ibid., s. 120.

[10] Canada, R.S., c. 160, s. 2(1)(h).

Only in Ontario might a situation approaching this be experienced, but even there the child would have to be "habitually absent from school" to be guilty of an offense and thus "liable to the penalties provided for children adjudged to be juvenile delinquents under the Juvenile Delinquents Act (Canada)."[11]

The Indian Child and School Discipline

The Indian Act is silent on any other types of sanctions that might be applied to the Indian school child, but it does make provision for the Minister to "make regulations with respect to... discipline in connection with Schools."[12] This he has done under Section 11.12 of the Departmental "Field Manual."

The whole question of the nature and use of discipline in schools, however, has its basis in Common Law. A teacher may administer 'moderate and reasonable punishment' to a child, as was determined in Ryan v. Fildes (1938), but only because he stands "in loco parentis" (in place of the parent) in relationship to the child.

In 1893, Mr. Justice Collins had maintained:

> "It is a clear law that a father has the right to inflict reasonable personal chastisement on his son. It is equally law, and it is in accordance with very ancient practice, that he may delegate this right to the schoolmaster."[13]

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[11] Ontario, R.S.O. (1970), c. 424, s. 14(5).

[12] Canada, R.S., c. 149, s. 115(a).

[13] Murdock v. Richards et al (1893), quoted in Peter F. Burgen, "The Legal Status of the Canadian Public School Pupil" (unpublished doctoral dissertation, University of Alberta, Edmonton, 1959), p. 193.

Lord Hewart, in 1929, carried this argument a step further:

> "Any parent who sends a child to school is presumed to give to the teacher authority to make reasonable regulations and to administer to the child reasonable corporal punishment for the breach of those regulations."[14]

And in 1954, Mr. Justice Prosser declared:

> "A parent or one who stands in place of a parent, may use reasonable force, including corporal punishment, for discipline and control."[15]

Therefore, any form of punishment used in schools generally must be reasonable, administered only for bona fide reasons of correction, and must be appropriately applied.

The regulations under section 11.12 of the Field Manual are intended to insure that these principles are followed. Punishment tending to humiliate a pupil is to be avoided, corporal punishment is only to be used as a last resort and when the pupil is fully aware of having done wrong, and the application of corporal punishment (with an issue strap and only on the palm of the hand) must be properly witnessed, recorded, and explained.

The other allowable disciplinary sanction is that of suspension of the pupil from school. This may be enforced if the child is guilty of "persistent truancy, persistent opposition to authority, habitual neglect of duty, the use of profane or improper language, or conduct injurious to the moral tone of the school."[16]

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[14] Rex v. Newport (1929), ibid., p. 192.

[15] Cleary v. Booth (1954), ibid., p. 195.

[16] Canada, Field Manual - Department of Indian Affairs (Ottawa: Queen's Printer, 1960), s. 11.12(h).

Disciplining of Indian Children in Previous Years

For the fact that the disciplining of Indian children was not carried out in the "reasonable" manner described in the current Field Manual, there is ample evidence.

Appearing before the Joint Committee of the Senate and the House of Commons on Indian affairs in 1959, a Mr. Hill of the Six Nations Reserve stated:

> "I was put in a Mohawk school which was a residential school operated by the New England Company at that time... we were punished with rawhide whips and put in cells with chains on our legs."[17]

When this took place is not mentioned, but the reputation of the Mohawk Institute in this respect stretches over many years. In 1895, Martin Benson reported to the Deputy Superintendent General of Indian Affairs ater an August visit to the Six Nations Reserve and noted:

> "The pupils are all locked in their dormitories at night... A room at the head of the landing leading to the rear of the Principal's house, is set apart for the solitary confinement of very refractory boys with a similar place on the Girls' side of the building. These two rooms are about 6 x 10 and are only lighted by a barred fanlight over the door. I asked the Principal if he ever had occasion to make use of these rooms, and he replied that he sometimes did so for short periods and that he found that this mode of punishment has a most salutory effect."[18]

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[17] Canada, Proceedings of the Joint Committee of the Senate and the House of Commons on Indian Affairs, 1959 (Ottawa: Queen's Printer, 1959), p.58.

[18] Public Archives of Canada, Records Group 10 (Red), Vol. 2006, File 7825-1A.

On a visit to the Institute in 1907, J. G. Ramsden, Inspector of Indian Agencies for Ontario, reported to the Secretary of the Department, J. A. McLean:

> "I cannot say that I was favourably impressed with the sight of two prison cells in the boys playhouse. I was informed, however, that these were for pupils who ran away from the institution, confinement being for a week at a time when pupils returned."[19]

The use of those cells over the years built up an atmosphere at the Mohawk Institute that was eventually to come boiling out into the open. But even as it became unpleasantly obvious that trouble would come of it, certain Departmental officials could still insist upon airily dismissing the whole situation.

During 1913, two students at the Institute, Hazel Miller, age 11, and her sister Ruth, age 13, had been returned to the school after 'escaping,' confined in these cells and subjected to severe physical punishment. Their father, George Miller, decided to sue the principal, Major Nelles Ashton, for damages as a result of the treatment.

But in the eyes of Duncan C. Scott, Deputy Superintendent General, as he observed in a memorandum to his Minister, the Hon. Dr. Roche:

> "The whole trouble has at the bottom denominational jealousy. It appears that some time ago the Church of England started a mission at Oshweken (sic), a stronghold of the Baptist Church, and there has been friction ever since. The two complainants, George W. Miller and Jefferson D. Isaac, are Baptists. There is no necessity whatever for an investigation, and if we were to allow it, it would only be

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[19] Public Archives of Canada, Records Group 10 (Red), Vol. 2771, File 154845.

> considered a triumph, first of these men personally, and second of their faction."[20]

That was on October 28, 1913. On December 3, Scott was still advising the Minister:

> "I am entirely adverse to having a formal investigation made into these charges. It is not a new thing to receive complaints from Indians making various charges against the management of our schools and necessary investigations are always made by our own Inspectors."[21]

Civil Suit for Excessive Punishment, 1914

However, on March 31, 1914, the case came to civil action before a jury and Mr. Justice Kelly of the High Court. The evidence presented, and the outcome of the action, were extensively reported by the Brantford Expositor on the following day, April 1.

The headlines read:

> "Damages for Plaintiff in Miller vs. Ashton Case -
> Girls too Severely Punished.
> Principal of Mohawk Institute Mulcted of $400.00
> Because of Treatment by a Subordinate of Two Indian
> Girls Who Made Their Escape."

There were four claims laid by Mr. Miller against the Principal, Major Ashton. The first, for damages for cropping the girls' hair after they were returned to the Institute,[22] was dismissed; the second, involving imprisonment in one of the previously-mentioned cells for three days, without light, and being given only water, brought an award of $100.00 damages on behalf of the eldest girl, Ruth; the third claim, for the whipping of Ruth on the bare back with a rawhide strap, resulted in a $300.00 damage decision; the fourth claim, in respect of the girls' health suffering because of poor food, was dismissed.

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[20] Ibid.

[21] Ibid.

[22] There is evidence, supplied by the staff of the school, that in at least one of the Indian residential schools in Saskatchewan as late as 1967, the practice of shaving the heads of "run-aways" was still in vogue.

The evidence given by the 13 year old girl, Ruth Miller, was reported as follows:

> "She had run away from the Institute because she did not like the food. When brought back she was put in the cell on the third floor, which was 3 ft. x 6 ft., with a little hole in the door. There was no light, no bed and no chair. In this she remained for three days, getting bread and water on Sunday. Her hair was cut off on Monday. She was placed on the black list,[23] having to walk in a ring in place of playing, and not being allowed to talk to the other girls. She tried to get away a second time, but was caught. She got a birching the next day, receiving thirteen stripes on the bare back while laying face downwards on a bed, from Miss Weatherall... Her back was black and blue and had red marks."[24]

During the course of presenting his evidence, the father added an interesting commentary on the way in which the Department was administered. After the girls had run home, he telephoned the Principal to let him know that he would bring them back the next day "and save (himself) the fees of a constable who would be sent after the girls otherwise."[25]

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[23] This involved having to wear a black apron, the forfeiture of all privileges, being deprived of all normal recess activities, and being "sent to Coventry."

[24] The Brantford Expositor, April 1, 1914.

On the witness stand, Major Ashton (who had succeeded his father when he retired after forty-one years as Principal of the Institute) contended that he did not make the rules, but merely carried them out - "It was an unwritten custom of the school for forty-three years to cut the girls' hair if they absconded."[26] He had ordered the Matron, Miss Weatherall, to whip the girls, but had not indicated how this was to be done.

Mr. Justice Kelly, in passing, had observed - "Rather humiliating for a child to be stripped and whipped?"- to which Major Ashton made no reply, and in summing up had noted:

> "A School Principal has the power to punish the children in a reasonable way, but the Institute was not a penal institution."[27]

As postscript to the atmosphere at the Institute, a memorandum of later that year from Martin Benson to Duncan Scott (October 19, 1914) noted that Mrs. Boyce, Acting Principal, had asked permission to "get rid of some of the refractory pupils."[28] He commented:

> "I have read these reports and the conclusion I have come to is that the pupils are disciplined to death...

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[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] The reasons advanced for wishing dismissal of certain students included - "This girl continually stands on back steps watching boys"; "Independent - late for sewing class"; and "This girl belongs to a low caste, her face is often repulsive in appearance."

> Perhaps they would be better out of the school than kept on the black list all the time and deprived of all liberty."[29]

Further Evidence of Harsh Discipline

The case brought to light by Mr. Miller's action was, unfortunately, not an isolated incident. In 1892, Mr Macrae, a School Inspector temporarily in charge of the Battleford Industrial School, was alleged to have locked a boy in a cell, tied a girl's hands behind her back and made pupils "stand for two hours alongside of a fence as punishment."[30] The monthly report, dated November 9, 1892, to the Commissioner of the Northwest Territories from the Principal of the school noted:

> "Lazarus Charles, the boy who was confined in close cells by Inspector Macrae... returned with his parents to the South Branch, and is not expected to recover."[31]

The following year, Hayter Reed, the Commissioner, wrote to the Bishop of Rupert's Land on this same topic noting:

> "Thomas Hope states that it was his daughter Mrs. James Prince who took his girl Eva away, but since he had learnt that she had her clothes taken up and been whipped in that state, he would not take her back as she was almost a woman, and that it was disgraceful. In regard to the Favel children, the parents complained about this girl Phinia, who is a big girl, being thrashed in the same manner as Eva Hope, and that their son Thomas's shirt was taken off and he

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[29] Public Archives of Canada, Records Group 10 (Red), Vol. 2771, File 154845.

[30] Public Archives of Canada, Records Group 10 (Red), Vol. 3880.

[31] Ibid.

> was thrashed on the bare back; this they say they will not stand."[32]

Nor was this practice of thrashing confined to the very early years. William Wuttunnee, the Calgary lawyer, recalling his experiences in a residential school, stated:

> "I remember when they took my cousin, ripped the shirt off his back, strapped him face down on a bed, and whipped him until he was raw. And why? Because he had spoken in Cree during recreation time after supper. If I could have, I would cheerfully have killed them."[33]

There was also apparently abuse of children in boarding schools as much by neglect as by physical punishment. After a visit to the Sarcee Boarding School, outside Calgary, in December, 1920, the visiting physician, Dr. Corbett, felt compelled to report to W. M. Graham, Commissioner for Indian Affairs:

> "The condition of one little girl found in the infirmary is pitiable indeed. She lies curled up in a bed that is filthy, in a room that is untidy, dirty and dilapitated (sic), in the north-west corner of the building with no provision of balcony, sunshine or fresh air. Both sides of her neck and chest are swollen and five foul ulcers are discovered when we lift the bandages."[34]

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[32] Public Archives of Canada, Records Group 10 (Red), Vol. 3930, File 117377-1A.

[33] Statement by William Wuttunnee during conversation with writer, August, 1968.

[34] Public Archives of Canada, Records Group 10 (Red), Vol. 4092, File 546898.

Benefits Accruing to the Indian Child

The status of the Indian child is, nowadays, hopefully such that abuse of this nature would be inconceivable. Instead, it would be anticipated that the present status of the Indian child would be reflected in the nature of the educational benefits he receives. Perhaps this can be illustrated best by reference to the nature of educational assistance that is available to him.

For Indian students in the in-school programme, attending provincial schools from their homes on the reserve, all tuition and special fees are paid, all books and other supplies provided, and an Educational Allowance of $10.00 per month is paid to students in Grades 9-13 (or between ages 14 and 17), while $20.00 per month is given to students 18 years or over enrolled in grades up to Grade 13. Daily bus transportation, plus additional transportation for extra-curricular activities is supplied, together with special clothing assistance.

If the student is residing in a boarding home rather than living at home on the reserve, similar assistance is available, plus the payment of the cost of board and room. This latter disbursement can either be paid on behalf of the student, or he can be given the funds to make the payments himself. For those living in a student residence, all the usual provisions, including that of an Educational Allowance of $10.00 per month, are made, with the clothing, board and room being supplied by the residence to the student without charge.

The availability of the Educational Allowances of $10.00 and $20.00 respectively as previously indicated and the provision of all books and supplies to those who live off the reserve and are in full-time attendance at school is a facet of the status of Indian children which has already been commented upon. What is of additional interest is the fact that similar degrees of Educational Assistance may be granted to non-Indians living on reserves. These non-Indian children include those of women of former Indian status who have returned to the reserve, illegitimate non-Indian children of Indian mothers, non-Indian children of mothers who become Indian through marriage, and non-Indian children legally adopted by Indian families living on the reserves. It can also include other "non-Indians" living on reserves for whom assistance, in the opinion of the Minister, is justified.[35]

In the post-school programme, similar assistance, covering cost of all fees, board and room, books and supplies, transportation, clothing and spending allowance is supplied, to enable the student to obtain a first degree or other types of pre-employment training. However, certain special circumstances have been recognized from time to time which enable this assistance to be extended beyond the level of a first degree, and also to allow students to study outside of Canada. This type and level of assistance is also available to Indian students who reside off the reserve.

The status of the Indian child, then, is attained through the legal provisions of the *Indian Act*, through the extra-legal nature of the wide extension of those provisions, and through the protection afforded him, and the environment created for him, through Common Law. But perhaps in the case of the Indian child, the basic assumptions which support Common Law concepts are not enough.

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[35] *Field Manual*, op. cit., ss. 13.15 and 11.10.

While these are reflected in the stated educational objectives of the Department:

> "The educational system administered by the Indian Affairs Branch attempts to provide a complete educational programme for every Indian child according to the individual needs, local circumstances, and the wishes of the parents"[36]

those "wishes of the Indian parents" may not necessarily include the English Common Law viewpoint that "a father has the right to inflict reasonable personal chastisement on his son." If it does not -- and there is considerable anthropological evidence to indicate that both traditionally and in many present Indian households the use of physical punishment as a means of disciplining children is culturally abhorrent -- then the position of the teacher being "in loco parentis" must assume a whole new interpretation.

Were that to be established and maintained, then the status of the Indian child would gain additional dimensions directly related to his cultural heritage and upbringing.

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[36] Canada, "The Administration of Indian Affairs," position papers prepared for the Federal-Provincial Conference on Indian Affairs, Ottawa, 1964, by the Indian Affairs Branch, Department of Citizenship and Immigration, p. 41.

CHAPTER XI

CONCLUSIONS

On April 15, 1885, Mr. M. C. Cameron, M.P. (West Huron) attacked the Administration of Indian Affairs in the Northwest Territories, claiming that their policies led only to the Indians of the area being "miserably poor." In a pamphlet prepared in reply to Mr. Cameron's criticisms, it was maintained:

> "Well, most of the Indians are miserably poor. If they were not, they would not need Governmental assistance. All the Government can do is to keep them from actual suffering... The Government must bring pressure to bear upon the Indians to induce them to help themselves. If they refuse to work, and refuse to settle down on their reserves, then they must take the consequences. They will remain miserably poor."[1]

It has long been held that one of the most important avenues to follow in the attempt to break the "poverty cycle" is that of education. The benefits of an effective educational system are considered to be those of skills and knowledges which result in better employment opportunities, of an overall raising of standards of living, in economic, physical, social and psychological terms, and of an enhanced status within society.

The achieving of that enhanced societal status, however, requires more than just the ingredient of education. It is dependent upon a number of other factors, not the least of which are the legal provisions

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[1] Canada, "The Facts Respecting Indian Administration in the North-West," pamphlet prepared by the Department of Indian Affairs (Ottawa: Queen's Printer, 1886), p. 20.

applicable to society as a whole, or to any particular segment of society which may be deemed to require some special legislative provision.

Summary of the Findings of the Study

It has been established that there was considered to be a need for special legislative provisions for Indian people in Canada.

At the time of Confederation, the Western Lands question had still to be resolved. In order for the government of the new Dominion to do this, bearing in mind the stipulations contained in the Proclamation of 1763, the British North America Act, under Head 24 of section 93, proclaimed Indians and their lands to be the specific legislative responsibility of the Federal Parliament. While designed primarily to assist in the orderly development of Western Canada, this provision brought all Canadian Indians within the Federal overview, even though some provincial statutes had previously been passed in respect of their affairs.

In the field of education, this meant that prior specific legislation was now defunct, and that a new series of legislative enactments would be required upon which to base the provision of educational services to Indian children. The nature and intent of some of the pre-Confederation legislation was retained. The aims of Indian education were unchanged - to bring Indian children to the knowledge of a particular Christian faith, to provide them with basic academic skills, and to supplement these two elements with agricultural or vocational skills which would both enable them to fit into the new Canadian society and compensate them for the diminishing opportunity to practice their ancient skills. Eventually, with the acquiring of sufficient educational skills, it was anticipated that they would no longer need, or wish, to retain their dependent status as

Indians, but would become enfranchised and be equal members of the larger society.

The legal context of Indian education from 1868 to 1927 indicated two major concerns. On the one hand, Indian Band Councils were encouraged to participate in the administration of the day schools on their reserves. The various Indian Acts and the amendments provided opportunities for the framing of local regulations covering the erection, maintenance and repair of school buildings, the attendance of Indian children between the ages of 6 and 15 years at those schools (which in turn led into regulations concerning both truancy and the general operation of reserve schools), and the determination of the desired faith of the teachers at those schools. The Band Council could also petition for a separate school to be established on the reserve, and could arrange for school inspections.

On the other hand, the Governor in Council, and the Superintendent General of Indian Affairs, also had powers which enabled them to supplement the work of the Band Councils, particularly in the area of school facilities and compulsory attendance for Indian children. They could also make provision for the attendance of Indian children at off-reserve schools, and for arrangements with the various churches to operate differing types of boarding schools for Indian children.

With the passing of the 1951 Indian Act, the legal provisions for Indian people to participate in the administration of educational services for their children were drastically reduced. They were left with the opportunity to determine the religious affiliation of the teacher, to petition for separate schools, and with very little else.

However, the legal context within which such provisions were made was not restricted to those sections of the Act pertaining directly to education. As a result, and because of the developing attitudes of both the Indian people themselves, of the Canadian society at large, and of the Federal agency most directly concerned in their welfare, it is noted that far greater developments have taken place in Indian education under the more restrictive terms of the 1951 Act than were achieved under the greater opportunities written into preceding Acts.

This apparent paradox is explained by two major factors. One has already been mentioned; societal attitudes, both in general and in particular, which are now prepared to aid rather than restrict development of minority groups and cultures within our society. The second is the exercise of those elements of power and influence which are inherent in and particular to such minority groups, in such a way that the broadest possible interpretation can be placed upon, and extracted from, the legal context within which they find themselves.

These factors led to some analysis of the status in educational matters of the Indian community, the Indian parent, and the Indian child. It was suggested that their status was composed not just of legal elements, but of some extra-legal elements as well, and that it was the maximized development of these elements that determine just what their status might be.

As a result, it was noted that the Indian community exercises considerable and growing power in the management of educational services on the reserve. They now have the opportunity to govern virtually all educational programmes on their reserves - kindergarten, in-school, post-school, student residences, and the support services specific to them - while they can also control the nature and content of agreements negotiated on behalf of the attendance of their children at provincial schools away from the reserves.

The status of the Indian parent was less clearly determined. As a reserve resident, he could enjoy those growing opportunities to be directly involved in the education of his children on the reserve that he had seen obtaining to non-Indian parents in the past, but not to himself. Once he moved from the reserve, however, then his status became more dependent upon the legal context within which provincial educational systems operate. Initially, he might find himself subject to provincial laws while not otherwise being considered a provincial resident for school purposes. At the same time, he would find himself deprived of those new opportunities to have a say in the education of his children on the reserve, and without a substitute voice in their education off the reserve. Eventually, however, his status might be one of special privilege in that he could be a fully participating member of the provincial system, including elective opportunities to the Board governing his children's schools, while still receiving particular benefits as a result of his latent Indian status.

Were he to remain a resident of the reserve, and have his children attend a provincial school, then his status would be very much in question. In certain provinces, he might be able to exercise his parental prerogative of being involved in the direction of his children's education. In other provinces, the legal context of the operation of the education system would cut him off from such involvement.

The education status of the Indian child is one that involves rights, benefits, duties, and obligations. He was promised certain educational opportunities under the terms of the treaties signed by his forefathers. He is able to obtain certain benefits within the context of the Indian Act, including the obvious provision of schools and teachers, but also the less obvious ones of not being forced to attend a school of a different Christian faith, of receiving educational assistance to aid in continuing with his education, and of being able to pursue that educational experience (under certain circumstances) even outside the confines of the classroom. He also enjoys the protection that other students enjoy from excessive and unreasonable punishment at the hands of school staffs.

On the other hand, he does have educational obligations, including those of regular attendance, attention to studies, and certain degrees of comportment within the school. Should he fail to observe these obligations, then he would be liable to certain sanctions spelled out in the legal context of Indian education, some of which go beyond those applied to non-Indian students in similar circumstances.

Special Points of Significance

There are some special points of significance, however, that need to be considered within the legal context of Indian education. Considerations in this study have centered around the provisions made within the Indian Act, with some consideration of supplementary provisions contained in provincial statutes. What has not been examined in detail, since the matter has not been specifically raised before the courts, is the potential conflict between the educational sections of the Indian Act and the Canadian Bill of Rights.

A most recent decision by Mr.Justice Osler in the Supreme Court of Ontario brings up once again the validity of the Indian Act. Although the case on which he handed down his decision centred around matters of tenure in respect of lands granted to the Six Nations Indians, and the question of whether the elected Council or the Council of Hereditary Chiefs was the proper legal entity on the reserve, his reported judgement contained the opinion that the Indian Act "is inoperative by virtue of its discrimination by reason of race."[2]

In passing, Mr. Justice Osler cited the Supreme Court of Canada ruling in the case of Regina v. Drybones (1967) in which an appeal was allowed against a conviction of being intoxicated off a reserve, on the grounds that section 94(a)(b) of the Indian Act was discriminatory and invalid under sections 1(b) and 2 of the Bill of Rights.[3] As Washburn points out, that decision "hinged on whether the Bill of Rights should be considered as a statutory declaration of fundamental human rights or merely a rule of interpretation for construing legislation existing at the time it was enacted."[4]

However, it should be borne in mind that the "Drybones Case" resulted in the declaration of that section of the Act being inoperative, not the entire Act itself. Similarly, Mr. Justice Osler's decision was required to deal specifically with the provisions under the Indian Act for local government of reserves. Thus it would appear that while he could rule that that section of the Act was similarly inoperative, his statement about the validity of the entire Act may be premature.

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[2] The Edmonton Journal, July 13, 1973, p. 62, col. 1.

[3] Canada, C.S. (1960), c. 44.

[4] Wilcomb E. Washburn, Red Man's Land/White Man's Law: A Study of the Past and Present Status of the American Indian (New York: Charles Scribner's Sons, 1971), p. 202.

Nevertheless, it would appear that challenges could be made against certain educational sections of the Indian Act, particularly sections 120 (in which an Indian child "shall be deemed to be a juvenile delinquent" for reasons of non-attendance) and 119(5) (concerning "habitual lateness"), especially when taken in concert; section 116(2)(c), in which the Minister may require attendance to age 18; and section 115(d), under which the Minister may apply moneys accruing to the child while in residence at a residential school to be paid towards his maintenance at that school.[5]

Another special point of significance brought out by this study is that the actual legal provisions for education under the Indian Act are very sparse. Thus the legal context under which educational services to Indian children are offered is one that is extremely vague. While Abbott's previously quoted comment of 1915 about being able to take Canada's laws, rules and regulations relating to Indian administration back to Washington in his coat pocket no longer applies, Superintendent of Indian Education Russell Ferrier's November, 1924, reply to Elmer Jamison is pertinent. He wrote:

> "The sections of the Indian Act are the only laws, but regulations are made from time to time in

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[5] However, since there are now officially no "residential schools," this sub-section of the Act may already be a dead issue.

> connection with specific problems or effects. There are no comprehensive set of Regulations, with the exception of the brief statement which we print on the back of the classroom register."[6]

There is still no comprehensive set of regulations available, and this makes the task of knowing the full legal context of Indian education an extremely difficult, almost impossible, one.

Implications of the Study

As a result of this situation, it was seen that there has been a tendency for administrators involved in Indian education to tackle problems ordinarily on the basis of attempting to fit the Indian parent or the Indian child to the situation.[7] Similarly, lacking the knowledge of the full legal context of Indian education, the administrator has also shown a tendency to attempt to actually change the law through the development of subordinate legislation. While no criticism is levelled at the motivations for such action -- whether these be from internal conviction or external pressure -- it has to be restated that this course of conduct does leave the administrator extremely vulnerable and could adversely affect his ability to administer effectively.

Evidence was presented, too, that indicated a heavy reliance upon attempting to adapt the European model of education to the Indian child without sufficient realization of his particular cultural needs. At the insistence of the Indian people, this trend is now being checked and slowly redirected. It is significant that many churchmen, including former missionaries on Indian reserves, are beginning to state publicly that their failure lay in trying to impose Christianity upon the Indian people instead of appreciating that North American Indian religious institutions, saving the Christ figure himself, were basically "Christian" in concept, outlook and observance. "If we had had sense enough to observe their experiences, and then mutually to share and jointly develop our different backgrounds..." is the import of their revised views on this subject. Such a message has obvious implications for the educational administrator involved, either directly or peripherally, in Indian education.

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[6] Public Archives of Canada, Records Group 10 (Red), Vol. 6001, File 1-1-2.

[7] See pp. 169, 181 and 237

And apart from the obvious implications this has in the whole area of curriculum development, both in Indian and non-Indian schools, it may be equally as important in the specific area of administrative decision-making. Traditionally, decisions in the Indian community are made on the basis of consensus. This involves long discussions covering every aspect of the problem to be solved and the possible solutions to be reached. Instant decisions on the basis of simple majorities are not part of this pattern. On the other hand, once a decision has been reached, then the earliest possible implementation of that decision is expected. Thus the pattern of Indian decision-making - that of long, exhaustive preliminary discussion and then rapid implementation - seems to be at variance with demands made upon the educational administrator, which often call for quick decisions but anticipate a considerable time-lapse before they become effective. Such a decision-making model might be difficult to adhere to, but a more complete knowledge and appreciation of it is essential in such cross-cultural administrative situations.

Suggestions for Further Research

Arising out of the work involved in the preparation of this study, a number of possibilities for further research suggest themselves.

(1) It is noted that previous studies into aspects of "Canadian" education have tended to deal exclusively, unless they are concerned specifically with the Canadian Indian, with non-Indian problems and situations. Thus it is observed that McCurdy's study on the status of the Canadian Teacher made no reference to the teacher in the Indian schools. Such a study might be both timely and beneficial.

(2) While this study has concerned itself with the context of Indian education, the area of Metis education has not been examined in a similar fashion, and much benefit might accrue from such a study.

(3) As was mentioned above, the context of decision-making within the Indian community might also be worthy of detailed examination, as might the history of the development of Indian School Boards and School Committees, and their interaction with non-Indian School Boards across the country.

(4) A comparative study between the legal contexts of education for the American and Canadian Indian might well supply some insights that would be of benefit to both systems, as might similar comparative studies between Canadian provisions and those for the aboriginal inhabitants of other countries, including New Zealand, Australia, South Africa, Japan and Arctic Russia.

Recommendations

It has been pointed out in other studies that one of the essential criteria for effective educational administration is a good knowledge of the context of the system within which one is working. This seems particularly true in respect of Indian education, whether the involvement is direct, by virtue of employment with the Department of Indian Affairs or with a local Indian education authority, or peripheral, as in the case of employment in a provincial school system, either on a local or provincial basis.

It is very difficult, however, to gain reasonably quick and easy access to that knowledge at the present time, and a major effort could well be expended upon insuring that a composite set of laws, rules and regulations is prepared in order to aid all concerned with Indian education to better understand and assist its operations.

At the same time, the reported comments of Harold Cardinal, President of the Indian Association of Alberta, concerning the recent decision by Mr. Justice Osler, emphasize another need. "It is significant for us in that we have an even more urgent responsibility to come up with a revision to the Indian Act," he stated.[8] The present Act contains three major aspects of Indian affairs - (a) administration of Indian lands, (b) the status of the Indian as a person, and (c) Indian education. It is recommended that in any re-writing of the Indian Act, consideration be given to its being reconstituted as three separate Acts, dealing with those topics outlined above. Thus, irrespective of any controversy that might arise over the interpretation of sections pertinent to a new Indian Act (dealing exclusively with the status of the Indian as a person), or a new Indian Lands Act, a new Indian Education Act could concentrate exclusively upon provisions for the education of Indian children.

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[8] The Edmonton Journal, op. cit., p. 62, col.3.

While many may feel that this would present no solution to the "Indian problem," it is important to bear in mind that there is, both constitutionally and morally, a special relationship between the larger Canadian society and the Indian members of that society. As John Gasson, Executive Director of the Indian-Eskimo Association of Canada, stated:

> "Most Indians feel that they have rights far beyond whatever the Indian Act grants them, but many will still view with apprehension the removal of the protection, however great or small, afforded under the Act."[9]

By accepting this concern as a reality on the part of the Indian people, it will be possible to work jointly towards solutions that will see the advantages of being Indian first and Canadian second, that will see no conflict between an Indian Education Act and the Bill of Rights, and that will then see Indian education truly serving the needs of Indian children in Canada.

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[9] Ibid., p. 62, col. 1.

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APPENDIX A

FEDERAL MINISTERS RESPONSIBLE FOR THE ADMINISTRATION OF INDIAN AFFAIRS, 1867 - 1973.

APPENDIX A

The responsibility for the administration of Indian Affairs has been lodged in a number of various Federal Departments over the years. The following list indicates both the Department and the Minister who has held that responsibility on succeeding occasions since Confederation. (It should be noted that from July 1, 1867, to May 7, 1880, it was known as the Indian Department; from May 8, 1880, to November 30, 1936, as the Department of Indian Affairs; from December 1, 1936, to December 31, 1965, as the Indian Affairs Branch; and from January 1, 1966, again as the Department of Indian Affairs.)

Department	Minister	
Department of the Secretary of State; 1867-1873.	Hon. Hector Louis Langevin	1867-1869
	Hon. Joseph Howe	1870-1873
	Hon. Thomas N. Gibbs	1873
Department of the Interior; July 1, 1873 to November 31, 1936.	Hon. Alexander Campbell	1873
	Hon. David Laird	1873-1876
	Hon. David Mills	1876-1878
	Rt. Hon. Sir John A. Macdonald	1878-1883
	Hon. Sir David E. Macpherson	1883-1885
	Hon. Thomas White	1885-1888
	Hon. Edgar Dewdney	1888-1892
	Hon. Thomas M. Daly	1892-1896
	Hon. Hugh J. MacDonald	1896
	Hon. Sir Clifford Sifton	1896-1905
	Hon. Frank Oliver	1905-1911
	Hon. Robert Rogers	1911-1912
	Hon. William James Roche	1912-1917
	Hon. Arthur Meighen	1917-1920
	Hon. Sir James A. Lougheed	1920-1921
	Hon. Charles M. Stewart	1921-1930
	Hon. Thomas G. Murphy	1930-1935
	Hon. Thomas Alexander Crerar	1935-1936
Department of Mines and Resources; December 1, 1936 to January 17, 1950	Hon. Thomas Alexander Crerar	1937-1945
	Hon. J. Allison Glen	1945-1947
	Hon. James A. MacKinnon	1947-1948
	Hon. Colin Gibson	1948-1949

Department of Citizenship and Immigration; January 18, 1950 to December 31, 1965.	Hon. Walter Harris	1950-1954
	Hon. J. W. Pickersgill	1954-1957
	*Hon. E. D. Fulton	1957-1958
	Hon. Ellen Fairclough	1958-1962
	Hon. R. A. Bell	1962-1963
	Hon. Guy Favreau	1963-1964
	Hon. Rene Tremblay	1964-1965
	Hon. J. R. Nicholson	1965
	*Hon. Jean Marchand	1965
Department of Indian Affairs and Northern Development; January 1, 1966	Hon. Arthur Lang	1966-1968
	Hon. Joseph-Jacques Jean Chretien	1968-

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*Indicates acting capacity. Mr. Marchand's term ran from December 18 to December 31, 1965.

N.B. This listing of the Departments and Ministers responsible for the administration of Indian Affairs differs significantly from that produced by Robert Surtees in The Original People, p. 44. Dr. Surtees indicates that the Indian Affairs Branch was lodged with the Departments of Resources and Development (1950-1953) and Northern Affairs and National Resources (1953-1966). This, as has been shown above, was not the case.

APPENDIX B.

OPENING STATEMENT OF THE FIFTH REPORT OF THE STANDING COMMITTEE OF THE HOUSE OF COMMONS ON INDIAN AFFAIRS AND NORTHERN DEVELOPMENTS, JUNE 22, 1971 (THE WATSON REPORT).

APPENDIX B

Opening Statement of the Fifth Report to the House of Commons, delivered by the Chairman of the Standing Committee on Indian Affairs and Northern Development, June 22, 1971 (The Watson Report):

"Your Committee is convinced that the Education of Indian and Eskimo young people, and in particular Indian young people, has suffered from the day-to-day, year-to-year improvisation attitude of successive governments which regarded Indian education as a passing thing, soon to be handed over to the provinces. At the present approximately 65% of Indian students attend provincial schools with the remaining 35% attending federal schools.

In those schools remaining under the control of the Education Branch, the Committee believes that the objectives of the federal schools should be the creation of models of excellence which will furnish to Indian and Eskimo young people, an education which will provide to them equality of opportunity and the ability to be employed at every level of the economy of the regions in which they live. A model education program that will have among its goals the elimination of all those factors within the present system which have condemned succeeding generations of Indian students to a disadvantaged status within the school system as well as in the adult society into which they graduate. The model system envisaged by the Committee would recognize that it has a major role to play in the elimination of the gap between the average Canadian unemployment rate and that of the Indian people, and would have among its goals the elimination of the differences in the high school drop-out rate, the elimination of the negative parental and community attitudes towards education now existing in many Indian and Eskimo communities. The Education Branch of the Department of Indian Affairs and Northern Development should have as a primary aim an effective approach to the problem of acculturation which faces most Indian and Eskimo young people.

The Committee would be unfair to both the Education Branch of the D.I.A.N.D. and to the provincial education systems if it did not acknowledge the awareness at federal and provincial levels that now exists of the inadequacies in the education program affecting Indian and Eskimo students.

This new awareness has produced many improvements and imaginative innovations:

> The direct involvement of a local Indian community in the operation of a student residence and school, as represented by the Blue Quills Agreement of December, 1970, between the Minister of Indian Affairs and Northern Development and the Blue Quills Native Education Council for the operation of the Blue Quills Student Residence and the subsequent agreement covering the operation of the Blue Quills School, has broken new ground in involving Indian people in educational decision making.

> The N.W.T. Teacher training Program in Fort Smith; the 76 Indian teacher aids working in Federal schools and the 75 working in Provincial schools; the proposed Indian Training Centre at Rivers Manitoba where the Canadian Forces Base will be taken over by the Department of Indian Affairs and Northern Development and will be developed as an industrial educational training complex under the management of a seven man Board comprised of three appointees of the Manitoba Indian Brotherhood, three appointees of the Minister and one by interested local industry; the on job training program whereby Kainai Industries Limited of Stand Off Alberta in co-operation with Haico Trailer Co., has provided training for 240 workers for a new plant being established on the Blood Reserve;

are outstanding examples of recent innovative programs and approaches taken by the Education Branch.

These new initiatives and directions are encouraging but so far they affect only a small percentage of Indian and Eskimo Youth. The annual addition to the school age Indian and Eskimo population far exceeds the numbers able to take advantage of these new programs.

It is the Committee's view that in the light of the result record of the federal schools and the Provincial systems, that the Government must immediately and in full consultation and partnership with the Indian and Eskimo people of Canada develop a Federal education system as free from the deficiencies afflicting our present program as is humanly possible."